TOWN OF TIMNATH
TOWN COUNCIL
Tuesday, January 28, 2014
IMMEDIATELY FOLLOWING THE TIMNATH LIQUOR BOARD AND TIMNATH DEVELOPMENT
AUTHORITY MEETINGS 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
   Mayor   Jill Grossman-Belisle
   Councilmember    Marty Chiaramonte
   Councilmember  Bill Neal
   Councilmember   Paul Steinway
   Councilmember          Bryan Voronin

2. AMENDMENTS TO THE AGENDA Note: The Council may add to this agenda, any item for discussion or action.

3. PUBLIC COMMENT: Note: It is requested that public comments be limited to three minutes. When several people wish to speak with the same position on a given item, they are requested to select a spokesperson to state that position.

4. CONSENT AGENDA
   a. Approval of the January 28, 2014, Town Council Meeting Minutes
   b. Approval of the Check Register

5. REPORTS
   a. Mayor and Council

6. ORDER OF BUSINESS:
   a. ORDINANCE NO. 1, SERIES 2014, SECOND READING, PUBLIC HEARING, An Ordinance Approving the Annexation of Certain Real Property to be Known as the Brunner Farms Annexation to the Town of Timnath, Colorado, Generally Located South of and Adjacent to CR 36/River Pass Road, and West of and Adjacent to Three Bell Parkway
      Presented by Matt Blakely, Contracted Town Planner

   b. ORDINANCE NO. 2, SERIES 2014, SECOND READING, PUBLIC HEARING, An Ordinance Amending the Official Zoning Map of the Town of Timnath for the Purpose of Zoning Certain Real Property to be Known as the Brunner Farms Annexation, Generally Located South of and Adjacent to CR 36/River Pass Road, and West of and Adjacent to Three Bell Parkway
      Presented by Matt Blakely, Contracted Town Planner

   c. ORDINANCE NO. 3, SERIES 2014, SECOND READING, PUBLIC HEARING, An Ordinance Ratifying Conveyances of Real Property Interests by Resolution
      Presented by Gary White, Contracted Town Attorney
All Attachments can be obtained at the Town Administration Building, 4800 Goodman Street

d. ORDINANCE NO. 4, SERIES 2014, FIRST READING, An Ordinance Approving a Franchise Agreement Between the Town of Timnath and Public Service Company of Colorado and Setting a Public Hearing for March 11, 2014 at 6:00 p.m.
   Presented by Gary White, Contracted Town Attorney

e. RESOLUTION NO. 13, SERIES 2014, A Resolution Approving The Brunner Farms Annexation Sketch Plan
   Presented by Matt Blakely, Contracted Town Planner

f. RESOLUTION NO. 14, SERIES 2014, A Resolution Approving the Brunner Farms Annexation Preliminary Plat
   Presented by Matt Blakely, Contracted Town Planner

g. RESOLUTION NO. 15, SERIES 2014, A Resolution Approving the Brunner Farms Annexation Final Plat
   Presented by Matt Blakely, Contracted Town Planner

h. RESOLUTION NO. 16, SERIES 2014, A Resolution Regarding Fishing is Fun
   Presented by Matt Blakely, Contracted Town Planner

i. RESOLUTION NO. 17, SERIES 2014, A Resolution Approving the Boxelder Ditch Maintenance Agreement
   Presented by April Getchius, Town Manager

j. RESOLUTION NO. 18, SERIES 2014, A Resolution Approving the Amended and Restated Cooperation Agreement Between the Town of Timnath and the Timnath Development Authority
   Presented by the Contracted Town Attorney

k. EXECUTIVE SESSION: “For the purposes of discussion concerning the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interests under Section §24-6-402(a), C.R.S.; discussion concerning personnel matters under §24-6-402(4)(f), C.R.S.; discussion regarding positions relative to matters that may be subject to negotiations and development of a strategy for negotiations under §24-6-402(4)(e), C.R.S.; and conferences with the Town’s attorney for purposes of receiving legal advice on specific legal questions under §24-6-402(4)(b), C.R.S.”
   Presented by the Contracted Town Attorney

7. ADJOURNMENT
1. CALL TO ORDER AND ROLL CALL:
Mayor Grossman-Belisle called to order the meeting of the Town Council on Tuesday, January 28, 2014 at 6:18 p.m.

Present:
   a. Mayor Jill Grossman-Belisle
   b. Councilmember Paul Steinway
   c. Councilmember Bryan Voronin

Absent:
   a. Councilmember Marty Chiaramonte
   b. Councilmember Bill Neal

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

2. AMENDMENTS TO THE AGENDA:
   a. Item 6j was removed.

3. PUBLIC COMMENT ON NON-AGENDA ITEMS:
   a. None

4. CONSENT AGENDA:
   a. Approval of the January 14, 2014, Town Council Meeting Minutes
   b. Approval of the Check Registers

   Councilmember Voronin moved to approve the consent agenda. Councilmember Steinway seconded the motion. The motion passed unanimously by voice vote.

5. REPORTS:
   a. Mayor/Council – NONE
6. ORDER OF BUSINESS:
   a. ORDINANCE NO. 1, SERIES 2014, FIRST READING, An Ordinance Approving the Annexation of Certain Real Property to be Known as the Brunner Farms Annexation to the Town of Timnath, Colorado, Generally Located South of and Adjacent to CR 36/River Pass Road, and West of and Adjacent to Three Bell Parkway and Setting a Public Hearing for February 11, 2014 at 6:00 p.m.
      Staff Comments:
      • Mr. Blakely Spoke to Council about the proposed ordinance.
      Councilmember Steinway moved to approve ORDINANCE NO. 1, SERIES 2014, FIRST READING, An Ordinance Approving the Annexation of Certain Real Property to be Known as the Brunner Farms Annexation to the Town of Timnath, Colorado, Generally Located South of and Adjacent to CR 36/River Pass Road, and West of and Adjacent to Three Bell Parkway and Setting a Public Hearing for February 11, 2014 at 6:00 p.m. Councilmember Voronin seconded the motion. The motion passed unanimously by voice vote.
   b. ORDINANCE NO. 2, SERIES 2014, FIRST READING, An Ordinance Amending the Official Zoning Map of the Town of Timnath for the Purpose of Zoning Certain Real Property to be Known as the Brunner Farms Annexation, Generally Located South of and Adjacent to CR 36/River Pass Road, and West of and Adjacent to Three Bell Parkway and Setting a Public Hearing for February 11, 2014 at 6:00 p.m.
      Staff Comments:
      • Mr. Blakely Spoke to Council about the proposed ordinance.
      Councilmember Steinway moved to approve ORDINANCE NO. 2, SERIES 2014, FIRST READING, An Ordinance Amending the Official Zoning Map of the Town of Timnath for the Purpose of Zoning Certain Real Property to be Known as the Brunner Farms Annexation, Generally Located South of and Adjacent to CR 36/River Pass Road, and West of and Adjacent to Three Bell Parkway and Setting a Public Hearing for February 11, 2014 at 6:00 p.m. Councilmember Voronin seconded the motion. The motion passed unanimously by voice vote.
   c. ORDINANCE NO. 3, SERIES 2014, FIRST READING, An Ordinance Ratifying Conveyances of Real Property Interests by Resolution and Setting a Public Hearing for February 11, 2014 at 6:00 p.m
      Staff Comments:
      • Mr. White spoke to Council about the proposed ordinance.
      Councilmember Voronin moved to approve ORDINANCE NO. 3, SERIES 2014, FIRST READING, An Ordinance Ratifying Conveyances of Real Property Interests by Resolution and Setting a Public Hearing for February 11, 2014 at 6:00 p.m. Councilmember Steinway seconded the motion. The motion passed unanimously by voice vote.
   d. RESOLUTION NO. 7, SERIES 2014, A Resolution Approving A Special Counsel Engagement Letter with Brownstein Hyatt Farber Schreck
Staff Comments:
- Mr. White spoke to Council about the proposed resolution.

Town Council Questions and Comments:

Councilmember Steinway moved to approve RESOLUTION NO. 7, SERIES 2014, A Resolution Approving A Special Counsel Engagement Letter with Brownstein Hyatt Farber Schreck. Councilmember Voronin seconded the motion. The motion passed unanimously by voice vote.

e. RESOLUTION NO. 8, SERIES 2014, A Resolution Authorizing April D. Getchius as Signor of the Timnath First National Bank Account

Staff Comments:
- Ms. Getchius spoke to Council about the proposed resolution.

Town Council Questions:

Councilmember Steinway moved to approve RESOLUTION NO. 8, SERIES 2014, A Resolution Authorizing April D. Getchius as Signor of the Timnath First National Bank Account. Councilmember Voronin seconded the motion. The motion passed unanimously by voice vote.

f. RESOLUTION NO. 9, SERIES 2014, A Resolution Approving the Second Amendment to the Loan Cooperation Agreement

Staff Comments:
- Mayor Grossman-Belisle spoke to Council about the proposed resolution.

Councilmember Steinway moved to approve RESOLUTION NO. 9, SERIES 2014, A Resolution Approving the Second Amendment to the Loan Cooperation Agreement. Councilmember Voronin seconded the motion. The motion passed unanimously by voice vote.

g. RESOLUTION NO. 10, SERIES 2014, Resolution Appointing Directors to Serratoga Metropolitan District Nos. 1 & 3

Staff Comments:
- Mr. White spoke to Council about the proposed resolution.

Public Comments:
- Tami Baggett asked what “general administration meant and Mr. White explained that it was only those responsibilities allowed by law.

Town Council Questions and Comments:

Councilmember Voronin moved to approve RESOLUTION NO. 10, SERIES 2014, Resolution Appointing Directors to Serratoga Metropolitan District Nos. 1 & 3. Councilmember Steinway seconded the motion. The motion passed unanimously by voice vote.
h. **RESOLUTION NO. 11, SERIES 2014**, A Resolution Approving the Town Clerk as the Designation Election Official for the 2014 Mail Ballot Election

Councilmember Voronin moved to approve **RESOLUTION NO. 11, SERIES 2014**, A Resolution Approving the Town Clerk as the Designation Election Official for the 2014 Mail Ballot Election. **Councilmember Steinway seconded the motion. The motion passed unanimously by voice vote.**

i. **RESOLUTION NO. 12, SERIES 2014**, A Resolution Authorizing the Town Manager to Enter Into a Six Month Lease Extension with the Cache La Poudre Reservoir Company

Staff Comments:

- Ms. Getchius spoke to Council about the proposed resolution

Town Council Questions and Comments:

Councilmember Steinway moved to approve **RESOLUTION NO. 12, SERIES 2014**, A Resolution Authorizing the Town Manager to Enter Into a Six Month Lease Extension with the Cache La Poudre Reservoir Company. **Councilmember Voronin seconded the motion. The motion passed unanimously by voice vote.**

j. **REMOVED - EXECUTIVE SESSION**: “For the purposes of discussion concerning the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interests under Section §24-6-402(a), C.R.S.; discussion concerning personnel matters under §24-6-402(4)(f), C.R.S.; discussion regarding positions relative to matters that may be subject to negotiations and development of a strategy for negotiations under §24-6-402(4)(e), C.R.S.; and conferences with the Town’s attorney for purposes of receiving legal advice on specific legal questions under §24-6-402(4)(b), C.R.S."

7. **ADJOURNMENT**:

Mayor Grossman-Belisle adjourned the meeting 6:32 p.m.


**TOWN OF TIMNATH**

Jill Grossman-Belisle, Mayor

**ATTEST:**
Milissa Peters, Town Clerk
Report Criteria:
Invoices with totals above $0.00 included.
Only unpaid invoices included.

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- April Getchius: 400.00
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- BOX ELDER DITCH COMPANY: 400.00
- BRIAN'S ELECTRIC COMPANY: 199.96
- CASELLE, INC: 545.00
- CENTURY LINK: 298.68
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**INTEGRA TELECOM**

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**JOHN DEERE GOVERNMENT & NATION**

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**Kissinger & Fellman, P.C.**

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**Lawn Doctor of Fort Collins**

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**LOWE’S**

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**MARCH, OLIVE & PHARRIS, LLC**

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**Total MARCH, OLIVE & PHARRIS, LLC:** 300.00

**MILISSA PETERS**

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**Total MILISSA PETERS:** 2,576.00

**NEOFUNDS BY NEOPOST**

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Total Neopost USA Inc: 40.58

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Total TST, INC CONSULTING ENGINEERS: 71,589.40

Vahrenwald, Johnson & McMahill, LLC

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Total Vahrenwald, Johnson & McMahill, LLC: 2,681.10

WHITE, BEAR, ANKELE, PC, ATTORNEYS AT LA

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Total WHITE, BEAR, ANKELE, PC, ATTORNEYS AT LA: 40,489.26

Wireless Advanced Communications Inc

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<td>Net Invoice Amount</td>
</tr>
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</table>

Dated: ______________________________________________________

Mayor: ______________________________________________________

City Council: ______________________________________________________

City Recorder: _____________________________________________________

---

Report Criteria:

- Invoices with totals above $0.00 included.
- Only unpaid invoices included.
Report Criteria:
Invoices with totals above $0.00 included.
Only unpaid invoices included.

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<tr>
<th>Vendor Name</th>
<th>Vendor Name</th>
<th>Invoice Number</th>
<th>Description</th>
<th>Invoice Date</th>
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<tr>
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<td>01/20/2014</td>
<td>38.76</td>
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<td>01/24/2014</td>
<td>27.63</td>
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<td>January 2014 Goodman Street</td>
<td>01/29/2014</td>
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<td>400050597</td>
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</table>

Total Xcel Energy: 4,631.94

Grand Totals: 78,779.52

Dated: ____________________________

Mayor: ____________________________

City Council: _____________________

_________________________________

_________________________________

_________________________________

_________________________________

City Recorder: ____________________

Report Criteria:
Invoices with totals above $0.00 included.
Only unpaid invoices included.
TOWN COUNCIL COMMUNICATION

<table>
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<th>Date: 2/19/14 for Council Meeting Date: 2/25/14</th>
<th>Item: Finance Update Report</th>
<th>Ordinance Resolution Discussion For Information X</th>
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| Presented by: Christine Harwell | 1.) **General Sales and Use Taxes** – For the year, sales and use taxes were up 3.87% (or $74,570) as compared to 2012.  
2.) **Revenues/Expenditures** – General Fund actual revenues through December were approximately $220,000 below the YTD budget. This variance was comprised of a negative variance of $1,535,000 for the transfer of loan proceeds from the TDA (originally budgeted to occur in February, but which will now not occur until 2014 due to a change in the start date of the project) and a net positive variance of $1,315,000 for all other revenues, with the largest variances being for building use taxes, building permits, annexation fees, and impact fees. The Town also received $260,000 from Fort Collins/Loveland Water and Sanitation District for reimbursement of the Old Town Sewer (which was not included in the 2013 budget). The Grant Fund transferred to the General Fund a federal grant in the amount of $241,000 for 2012 Poudre Trail construction costs and $837,000 in CDOT payments for the Harmony Road widening project. An unbudgeted transfer from the TDA in the amount of $1.4 million of unspent project funds was used to fund capital projects during 2013.  
Total General Fund YTD expenditures through December were $4,342,000 less than the YTD budget, with a $116,000 positive variance for General Government. There was a positive variance of $704,000 for Parks and Recreation because expenses for park development did not occur as expected. The budgeted amount for General Park Development was not fully spent in 2013, and most of the costs budgeted for the Poudre Trailhead Park will now occur in 2014. The $3,435,000 positive variance for Capital Outlay was comprised of positive variances for Harmony Road Phase IIA, Riverbend Entry Road, Offsite Sewer Extension, and TDA sales tax transfers. The final costs for Harmony Road Phase IIA are below the budgeted amount for 2013, while the budgeted costs for the other two capital projects are now projected to occur in 2014. |
TOWN OF TIMNATH
FINANCIAL STATEMENTS

December 31, 2013
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
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<td>Accountant's Report</td>
<td>3</td>
</tr>
<tr>
<td>Financials Statements</td>
<td>4</td>
</tr>
<tr>
<td>Supplementary Information</td>
<td>13</td>
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</table>
Accountant’s Compilation Report

Mayor and Council
Town of Timnath
Larimer County, Colorado

We have compiled the accompanying balance sheet – governmental funds of the Town of Timnath along with the Timnath Development Authority (TDA), which is presented as a blended component unit of the Town, as of December 31, 2013, and the related statement of revenues, expenditures and changes in fund balances – budget and actual for the period from January 1, 2013 though December 31, 2013, for the General Fund and Special Revenue Fund, and the accompanying supplementary information which is presented only for supplementary analysis purposes. We have not audited or reviewed the accompanying financial statements and supplementary schedules and, accordingly, do not express an opinion or provide any assurance about whether the financial statements and supplementary schedules are in accordance with accounting principles generally accepted in the United States of America.

The Town acting through the Town Council is ultimately responsible for and causes the preparation and fair presentation of the financial statements and supplementary schedules in accordance with accounting principles generally accepted in the United States of America, and for designing, implementing and maintaining internal control relevant to the preparation and fair presentation of the financial statements and supplementary schedules.

Our responsibility is to conduct the compilation in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The objective of a compilation is to assist management in presenting financial information, in the form of financial statements and supplementary schedules, without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statements or supplementary schedules. During our compilation, we did become aware of certain departures from accounting principles generally accepted in the United States of America that are described in the following paragraph.

Government-wide financial statements, the statement of revenues, expenditures and changes in fund balances – governmental funds, and the management discussion and analysis have not been presented. Accounting principles generally accepted in the United States of America require that such statements and information be presented when financial statements purport to present financial position and results of operations.

Substantially all of the disclosures required by accounting principles generally accepted in the United States of America have been omitted by the Town. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Town’s financial position and results of operations. Accordingly, these financial statements not designed for those who are not informed about such matters.

We are not independent with respect to the Town of Timnath.

Greenwood Village, Colorado
February 19, 2014
TOWN OF TIMNATH
BALANCE SHEET - GOVERNMENTAL FUNDS
December 31, 2012

<table>
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<th>Assets</th>
<th>General Fund</th>
<th>Grants Fund</th>
<th>TDA</th>
<th>Total Governmental Funds</th>
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<td>$4,000</td>
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<td>$447,137</td>
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<td>Cash - Petty</td>
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<td>300</td>
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<td>Investment - ColoTrust</td>
<td>7,286,190</td>
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<td>1,223,081</td>
<td>8,509,271</td>
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<tr>
<td>Investment - Compass</td>
<td>-</td>
<td>-</td>
<td>3,941,463</td>
<td>3,941,463</td>
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<td>A/R - Other / General</td>
<td>437,231</td>
<td>-</td>
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<td>437,231</td>
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<tr>
<td>Total Assets</td>
<td>$8,166,858</td>
<td>$4,000</td>
<td>$5,164,544</td>
<td>$13,335,402</td>
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</table>

| Liabilities and Fund Balance |             |             |     |                          |

| Liabilities                  |             |             |     |                          |
| Accounts Payable             | $342,671    | -           | -   | 342,671                  |
| Retainage Payable            | 55,698      | -           | -   | 55,698                   |
| Comcast Deposit              | 10,000      | -           | -   | 10,000                   |
| Deferred Contingent Liability| 16,352      | -           | -   | 16,352                   |
| TIF Payable - Poudre Valley Fire | -       | -           | 1,223,198 | 1,223,198               |
| Letter of Credit Deposit     | 44,453      | -           | -   | 44,453                   |
| Developer Deposits           | 107,872     | -           | -   | 107,872                  |
| Total Liabilities            | 577,046     | -           | 1,223,198 | 1,800,244               |

| Fund Balance                 |             |             |     |                          |

| Reserved                    |             |             |     |                          |
| 1/4 Cent                    | 322,195     | -           | -   | 322,195                  |
| Conservation Trust Fund     | 29,560      | -           | -   | 29,560                   |
| Police Impact Fees          | 91,319      | -           | -   | 91,319                   |
| Parks Impact Fees           | 2,105,537   | -           | -   | 2,105,537               |
| Street Impact Fees          | 46,359      | -           | -   | 46,359                   |
| School Impact Fees          | 774,397     | -           | -   | 774,397                  |
| Storm Impact Fees           | 10,387      | -           | -   | 10,387                   |
| Wild Wing                   | 105,000     | -           | -   | 105,000                  |
| Offsite Storm               | 108,000     | -           | -   | 108,000                  |
| Offsite Street              | 108,000     | -           | -   | 108,000                  |
| Website Development         | -           | 4,000       | -   | 4,000                    |
| Capital Projects            | 185,870     | -           | -   | 185,870                  |
| Debt Service                | -           | -           | 3,941,346 | 3,941,346               |
| Unrestricted                | 3,703,188   | -           | -   | 3,703,188                |
| Total Fund Balance          | 7,589,812   | 4,000       | 3,941,346 | 11,535,158              |

| Total Liabilities and Fund Balance | $8,166,858   | $4,000      | $5,164,544 | $13,335,402             |
TOWN OF TIMNATH
STATEMENT OF REVENUE, EXPENDITURES AND
CHANGES IN FUND BALANCE - ACTUAL AND BUDGET
FOR THE 12 MONTHS ENDING DECEMBER 31, 2013

GENERAL FUND

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<tr>
<th></th>
<th>CURRENT MONTH ACTUAL</th>
<th>YEAR TO DATE ACTUAL</th>
<th>YEAR TO DATE BUDGET</th>
<th>YEAR TO DATE VARIANCE</th>
<th>ANNUAL BUDGET</th>
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<td>TAXES</td>
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<td>$ 2,695,029</td>
<td>$ 409,759</td>
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<td>(1,374,692)</td>
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<td>768,154</td>
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<td>(838)</td>
<td>7,800</td>
</tr>
<tr>
<td>INTEREST INCOME</td>
<td>739</td>
<td>8,763</td>
<td>8,000</td>
<td>763</td>
<td>8,000</td>
</tr>
<tr>
<td>OTHER INCOME</td>
<td>-</td>
<td>4,178</td>
<td>45,000</td>
<td>(40,822)</td>
<td>45,000</td>
</tr>
<tr>
<td>TOTAL REVENUE</td>
<td>369,869</td>
<td>5,696,177</td>
<td>5,915,827</td>
<td>(219,650)</td>
<td>5,915,827</td>
</tr>
</tbody>
</table>

| EXPENDITURES           |                      |                     |                     |                       |               |
| GENERAL GOVERNMENT     | 91,942               | 1,113,814           | 1,229,999           | 116,185               | 1,229,999     |
| MUNICIPAL COURT        | 1,186                | 15,798              | 19,350              | 3,552                 | 19,350        |
| COMMUNITY DEVELOPMENT  | 20,962               | 296,509             | 277,000             | (19,509)              | 277,000       |
| PUBLIC SAFETY          | 19,292               | 227,492             | 257,102             | 29,610                | 257,102       |
| PUBLIC WORKS           | 33,426               | 827,389             | 900,780             | 73,391                | 900,780       |
| PARKS AND RECREATION   | 8,424                | 292,730             | 997,102             | 704,372               | 997,102       |
| CAPITAL OUTLAY         | 94,693               | 3,311,844           | 6,746,537           | 3,434,693             | 6,746,537     |
| TOTAL EXPENDITURES     | 269,925              | 6,085,576           | 10,427,870          | 4,342,294             | 10,427,870    |

| EXCESS OF REVENUES OVER (UNDER) EXPENDITURES | 99,944 | (389,399) | (4,512,043) | 4,122,644 | (4,512,043) |
| OTHER FINANCING SOURCES (USES) | 837,114 | 2,498,043 | 1,464,782 | 1,033,261 | 1,464,782 |
| TOTAL OTHER FINANCING SOURCES (USES) | 837,114 | 2,498,043 | 1,464,782 | 1,033,261 | 1,464,782 |

| EXCESS OF REVENUE AND OTHER FINANCING SOURCES OVER (UNDER) EXPENDITURES AND OTHER FINANCING USES | 937,058 | 2,108,644 | (3,047,261) | 5,155,905 | (3,047,261) |
| FUND BALANCE - BEGINNING | - | 5,481,168 | 6,113,295 | (632,127) | 6,113,295 |
| FUND BALANCE - ENDING | $ 937,058 | $ 7,589,812 | $ 3,066,034 | $ 4,523,778 | $ 3,066,034 |

This financial information should be read only in connection with the accompanying accountant's compilation report.
TOWN OF TIMNATH
STATEMENT OF REVENUE, EXPENDITURES AND
CHANGES IN FUND BALANCE - ACTUAL AND BUDGET
FOR THE 12 MONTHS ENDING DECEMBER 31, 2013

GENERAL FUND

REVENUE DETAIL

<table>
<thead>
<tr>
<th></th>
<th>CURRENT MONTH</th>
<th>YEAR TO DATE ACTUAL</th>
<th>YEAR TO DATE BUDGET</th>
<th>YEAR TO DATE VARIANCE</th>
<th>ANNUAL BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TAXES</strong></td>
<td></td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>PROPERTY TAX</td>
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<td>39,538</td>
<td>36,029</td>
<td>3,509</td>
<td>36,029</td>
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<td>15,717</td>
<td>15,000</td>
<td>717</td>
<td>15,000</td>
</tr>
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<td>2,000,521</td>
<td>1,971,000</td>
<td>29,521</td>
<td>1,971,000</td>
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<td>19,084</td>
<td>171,017</td>
<td>123,000</td>
<td>48,017</td>
<td>123,000</td>
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<td>USE TAX-BUILDING MATERIALS</td>
<td>31,306</td>
<td>877,995</td>
<td>550,000</td>
<td>327,995</td>
<td>550,000</td>
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<td>3,104,788</td>
<td>2,695,029</td>
<td>409,759</td>
<td>2,695,029</td>
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<td><strong>INTERGOVERNMENTAL REVENUE</strong></td>
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<td></td>
<td></td>
<td></td>
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<tr>
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<td>80,235</td>
<td>75,800</td>
<td>4,435</td>
<td>75,800</td>
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<td>73,065</td>
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<td>68,424</td>
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<td>8,673</td>
<td>6,936</td>
<td>1,737</td>
<td>6,936</td>
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<td>CIGARETTE TAX</td>
<td>673</td>
<td>7,900</td>
<td>8,000</td>
<td>(100)</td>
<td>8,000</td>
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<td>4,422</td>
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<td>4,422</td>
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<td>8,972</td>
<td>8,981</td>
<td>(9)</td>
<td>8,981</td>
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<td>5,784</td>
<td>4,692</td>
<td>1,092</td>
<td>4,692</td>
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<td>0</td>
<td>0</td>
<td>1,621,743</td>
<td>(1,621,743)</td>
<td>1,621,743</td>
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<td>260,292</td>
<td>25,000</td>
<td>235,292</td>
<td>25,000</td>
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<tr>
<td><strong>TOTAL INTERGOVERNMENTAL REVENUE</strong></td>
<td>14,210</td>
<td>449,306</td>
<td>1,823,998</td>
<td>(1,374,692)</td>
<td>1,823,998</td>
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<tr>
<td><strong>LICENSES FEES AND CHARGES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SALES AND USE TAX AND BUSINESS LICENSE FEES</td>
<td>875</td>
<td>12,600</td>
<td>11,800</td>
<td>800</td>
<td>11,800</td>
</tr>
<tr>
<td>LIQUOR LICENSE FEES</td>
<td>0</td>
<td>150</td>
<td>200</td>
<td>(50)</td>
<td>200</td>
</tr>
<tr>
<td>BUILDING PERMIT FEES</td>
<td>20,594</td>
<td>633,298</td>
<td>350,000</td>
<td>283,298</td>
<td>350,000</td>
</tr>
<tr>
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<td>20,098</td>
<td>55,000</td>
<td>(34,902)</td>
<td>55,000</td>
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<td>0</td>
<td>132,400</td>
<td>0</td>
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<td>187,369</td>
<td>97,500</td>
<td>89,869</td>
<td>97,500</td>
</tr>
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<td>1,017,978</td>
<td>705,000</td>
<td>312,978</td>
<td>705,000</td>
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<td>DEVELOPMENT FEES FROM DEVELOPERS</td>
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<td>19,436</td>
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<td>(20,564)</td>
<td>40,000</td>
</tr>
<tr>
<td>OTHER LICENSE FEES AND CHARGES</td>
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<td>11,825</td>
<td>7,500</td>
<td>4,325</td>
<td>7,500</td>
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<tr>
<td><strong>TOTAL LICENSES FEES AND CHARGES</strong></td>
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<td>1,267,000</td>
<td>768,154</td>
<td>1,267,000</td>
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<tr>
<td><strong>FRANCHISE FEES</strong></td>
<td>13,256</td>
<td>87,026</td>
<td>69,000</td>
<td>18,026</td>
<td>69,000</td>
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<tr>
<td><strong>FINES AND FORFEITURES</strong></td>
<td>252</td>
<td>6,962</td>
<td>7,800</td>
<td>(838)</td>
<td>7,800</td>
</tr>
<tr>
<td><strong>INTEREST INCOME</strong></td>
<td>739</td>
<td>8,763</td>
<td>8,000</td>
<td>763</td>
<td>8,000</td>
</tr>
<tr>
<td><strong>OTHER INCOME</strong></td>
<td>0</td>
<td>4,178</td>
<td>45,000</td>
<td>(40,822)</td>
<td>45,000</td>
</tr>
<tr>
<td><strong>TOTAL REVENUE</strong></td>
<td>369,868</td>
<td>5,696,177</td>
<td>5,915,827</td>
<td>(219,650)</td>
<td>5,915,827</td>
</tr>
</tbody>
</table>

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## TOWN OF TIMNATH

STATEMENT OF REVENUE, EXPENDITURES AND
CHANGES IN FUND BALANCE - ACTUAL AND BUDGET
FOR THE 12 MONTHS ENDING DECEMBER 31, 2013

### GENERAL FUND

## EXPENDITURE DETAIL

<table>
<thead>
<tr>
<th></th>
<th>CURRENT MONTH</th>
<th>YEAR TO DATE ACTUAL</th>
<th>YEAR TO DATE BUDGET</th>
<th>YEAR TO DATE VARIANCE</th>
<th>ANNUAL BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GENERAL GOVERNMENT</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOWN COUNCIL EXPENDITURES</td>
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<td>2,709</td>
<td>6,000</td>
<td>3,291</td>
<td>6,000</td>
</tr>
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<td>TOWN CLERK OFFICE - SALARIES AND BENEFITS</td>
<td>6,089</td>
<td>77,743</td>
<td>86,116</td>
<td>8,373</td>
<td>86,116</td>
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<tr>
<td>TOWN CLERK - ELECTIONS</td>
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<td>0</td>
<td>2,000</td>
<td>2,000</td>
<td></td>
</tr>
<tr>
<td>COUNTY TREASURER AND OTHER FEES</td>
<td>953</td>
<td>13,392</td>
<td>3,603</td>
<td>(9,789)</td>
<td>3,603</td>
</tr>
<tr>
<td>TOWN ADMINISTRATION - SALARIES AND BENEFITS</td>
<td>21,268</td>
<td>143,017</td>
<td>180,000</td>
<td>36,983</td>
<td>180,000</td>
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<tr>
<td>ADVERTISING</td>
<td>27</td>
<td>240</td>
<td>150</td>
<td>(90)</td>
<td>150</td>
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<td>DUES AND MEMBERSHIPS</td>
<td>138</td>
<td>13,753</td>
<td>14,000</td>
<td>247</td>
<td>14,000</td>
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<td>FINANCE - SALARIES AND BENEFITS</td>
<td>7,298</td>
<td>75,122</td>
<td>76,475</td>
<td>1,353</td>
<td>76,475</td>
</tr>
<tr>
<td>FINANCE - CONTRACTED</td>
<td>9,164</td>
<td>222,704</td>
<td>230,000</td>
<td>7,296</td>
<td>230,000</td>
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<tr>
<td>HUMAN RESOURCES - CONTRACTED</td>
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<td>9,270</td>
<td>8,452</td>
<td>(818)</td>
<td>8,452</td>
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<tr>
<td>INFORMATION TECHNOLOGY-CONTRACTED</td>
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<td>46,077</td>
<td>50,000</td>
<td>3,923</td>
<td>50,000</td>
</tr>
<tr>
<td>INFORMATION TECHNOLOGY-HARDWARE &amp; SOFTWARE</td>
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<td>30,154</td>
<td>50,000</td>
<td>19,846</td>
<td>50,000</td>
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<tr>
<td>LEGAL - CONTRACTED</td>
<td>17,503</td>
<td>223,434</td>
<td>250,000</td>
<td>26,566</td>
<td>250,000</td>
</tr>
<tr>
<td>LEGAL - CONTRACTED-SPECIAL</td>
<td>13,779</td>
<td>111,561</td>
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<td>(86,561)</td>
<td>25,000</td>
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<td>19,000</td>
<td>701</td>
<td>19,000</td>
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<td>CONSULTING</td>
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<td>20,000</td>
<td>2,830</td>
<td>20,000</td>
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<tr>
<td>ECONOMIC DEVELOPMENT</td>
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<td>0</td>
<td>100,000</td>
<td>100,000</td>
<td>100,000</td>
</tr>
<tr>
<td>INSURANCE</td>
<td>2,102</td>
<td>33,845</td>
<td>21,517</td>
<td>(12,328)</td>
<td>21,517</td>
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<tr>
<td>TOWN OFFICE</td>
<td>4,833</td>
<td>49,647</td>
<td>48,300</td>
<td>(1,347)</td>
<td>48,300</td>
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<tr>
<td>TOWN CELEBRATIONS</td>
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<td>18,053</td>
<td>14,000</td>
<td>(4,053)</td>
<td>14,000</td>
</tr>
<tr>
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<td>835</td>
<td>7,625</td>
<td>25,386</td>
<td>17,761</td>
<td>25,386</td>
</tr>
<tr>
<td><strong>TOTAL GENERAL GOVERNMENT</strong></td>
<td>91,942</td>
<td>1,113,814</td>
<td>1,229,999</td>
<td>116,185</td>
<td>1,229,999</td>
</tr>
</tbody>
</table>

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### TOWN OF TIMNATH

**STATEMENT OF REVENUE, EXPENDITURES AND CHANGES IN FUND BALANCE - ACTUAL AND BUDGET**

**FOR THE 12 MONTHS ENDING DECEMBER 31, 2013**

**GENERAL FUND**

**EXPENDITURE DETAIL**

<table>
<thead>
<tr>
<th></th>
<th>CURRENT MONTH ACTUAL</th>
<th>YEAR TO DATE ACTUAL</th>
<th>YEAR TO DATE BUDGET</th>
<th>YEAR TO DATE VARIANCE</th>
<th>ANNUAL BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MUNICIPAL COURT</strong></td>
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<td></td>
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<td></td>
</tr>
<tr>
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<td>2,467</td>
<td>6,000</td>
<td>3,533</td>
<td>6,000</td>
</tr>
<tr>
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<td>13,200</td>
<td>13,200</td>
<td>0</td>
<td>13,200</td>
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<tr>
<td>ADMINISTRATION</td>
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<td>131</td>
<td>150</td>
<td>19</td>
<td>150</td>
</tr>
<tr>
<td><strong>TOTAL MUNICIPAL COURT</strong></td>
<td>1,186</td>
<td>15,798</td>
<td>19,350</td>
<td>3,552</td>
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</tr>
<tr>
<td><strong>COMMUNITY DEVELOPMENT</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PLANNER-CONTRACTED</td>
<td>15,033</td>
<td>199,979</td>
<td>156,000</td>
<td>(43,979)</td>
<td>156,000</td>
</tr>
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<td>38,223</td>
<td>50,000</td>
<td>11,777</td>
<td>50,000</td>
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<td>36,075</td>
<td>42,000</td>
<td>5,925</td>
<td>42,000</td>
</tr>
<tr>
<td>CONTRACTED - ENGINEER</td>
<td>0</td>
<td>760</td>
<td>0</td>
<td>(760)</td>
<td>0</td>
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<td>18,493</td>
<td>24,000</td>
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<tr>
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<td>0</td>
</tr>
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<td>2,773</td>
<td>5,000</td>
<td>2,227</td>
<td>5,000</td>
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<tr>
<td><strong>TOTAL COMMUNITY DEVELOPMENT</strong></td>
<td>20,962</td>
<td>296,509</td>
<td>277,000</td>
<td>(19,509)</td>
<td>277,000</td>
</tr>
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<td><strong>PUBLIC SAFETY</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
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<td>18,529</td>
<td>195,875</td>
<td>197,552</td>
<td>1,677</td>
<td>197,552</td>
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<td>267</td>
<td>4,667</td>
<td>10,550</td>
<td>5,883</td>
<td>10,550</td>
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<td>50</td>
<td>18,455</td>
<td>25,500</td>
<td>7,045</td>
<td>25,500</td>
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<td>VEHICLES AND EQUIPMENT</td>
<td>137</td>
<td>2,760</td>
<td>10,000</td>
<td>7,240</td>
<td>10,000</td>
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<td>3,500</td>
<td>1,259</td>
<td>3,500</td>
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<tr>
<td>MISCELLANEOUS</td>
<td>309</td>
<td>3,494</td>
<td>10,000</td>
<td>6,506</td>
<td>10,000</td>
</tr>
<tr>
<td><strong>TOTAL PUBLIC SAFETY</strong></td>
<td>19,292</td>
<td>227,492</td>
<td>257,102</td>
<td>29,610</td>
<td>257,102</td>
</tr>
</tbody>
</table>

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TOTAL PUBLIC WORKS

<table>
<thead>
<tr>
<th>Description</th>
<th>Current Month</th>
<th>Year to Date Actual</th>
<th>Year to Date Budget</th>
<th>Year to Date Variance</th>
<th>Annual Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>SALARIES AND BENEFITS</td>
<td>10,421</td>
<td>106,421</td>
<td>105,580</td>
<td>(841)</td>
<td>105,580</td>
</tr>
<tr>
<td>ENGINEER-CONTRACTED</td>
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<td>106,314</td>
<td>150,000</td>
<td>43,686</td>
<td>150,000</td>
</tr>
<tr>
<td>CONTRACTED SERVICES - OTHER</td>
<td>1,710</td>
<td>142,733</td>
<td>180,000</td>
<td>37,267</td>
<td>180,000</td>
</tr>
<tr>
<td>MOSQUITO CONTROL</td>
<td>0</td>
<td>29,616</td>
<td>23,700</td>
<td>(5,916)</td>
<td>23,700</td>
</tr>
<tr>
<td>WEED CONTROL</td>
<td>0</td>
<td>9,450</td>
<td>12,000</td>
<td>2,550</td>
<td>12,000</td>
</tr>
<tr>
<td>GRADING</td>
<td>0</td>
<td>1,460</td>
<td>10,000</td>
<td>8,540</td>
<td>10,000</td>
</tr>
<tr>
<td>CUSTODIAL AND UTILITIES</td>
<td>106</td>
<td>1,990</td>
<td>2,000</td>
<td>10</td>
<td>2,000</td>
</tr>
<tr>
<td>STREET LIGHTING</td>
<td>3,755</td>
<td>44,506</td>
<td>37,000</td>
<td>(7,506)</td>
<td>37,000</td>
</tr>
<tr>
<td>BUILDING - REPAIRS AND MAINTENANCE</td>
<td>0</td>
<td>7,863</td>
<td>15,000</td>
<td>7,137</td>
<td>15,000</td>
</tr>
<tr>
<td>VEHICLES - REPAIRS AND MAINTENANCE</td>
<td>486</td>
<td>16,810</td>
<td>15,000</td>
<td>(1,810)</td>
<td>15,000</td>
</tr>
<tr>
<td>MATERIALS</td>
<td>2,030</td>
<td>4,867</td>
<td>5,000</td>
<td>133</td>
<td>5,000</td>
</tr>
<tr>
<td>EQUIPMENT RENTALS</td>
<td>0</td>
<td>230</td>
<td>1,500</td>
<td>1,270</td>
<td>1,500</td>
</tr>
<tr>
<td>HOLIDAY DECORATIONS</td>
<td>220</td>
<td>220</td>
<td>2,500</td>
<td>2,280</td>
<td>2,500</td>
</tr>
<tr>
<td>TOWN CLEAN-UP DAY</td>
<td>0</td>
<td>4,446</td>
<td>6,000</td>
<td>1,554</td>
<td>6,000</td>
</tr>
<tr>
<td>SNOW PLOWING</td>
<td>0</td>
<td>14,786</td>
<td>20,000</td>
<td>5,214</td>
<td>20,000</td>
</tr>
<tr>
<td>STREET SWEEPING</td>
<td>0</td>
<td>630</td>
<td>4,500</td>
<td>3,870</td>
<td>4,500</td>
</tr>
<tr>
<td>SIGNAL MAINTENANCE</td>
<td>0</td>
<td>3,957</td>
<td>10,000</td>
<td>6,043</td>
<td>10,000</td>
</tr>
<tr>
<td>DRAINAGE</td>
<td>0</td>
<td>0</td>
<td>10,000</td>
<td>10,000</td>
<td>10,000</td>
</tr>
<tr>
<td>ROAD MAINTENANCE</td>
<td>521</td>
<td>289,771</td>
<td>218,000</td>
<td>(71,771)</td>
<td>218,000</td>
</tr>
<tr>
<td>STREET SIGNS</td>
<td>1,376</td>
<td>5,637</td>
<td>7,000</td>
<td>1,363</td>
<td>7,000</td>
</tr>
<tr>
<td>STREET STRIPING</td>
<td>11,486</td>
<td>11,486</td>
<td>30,000</td>
<td>18,514</td>
<td>30,000</td>
</tr>
<tr>
<td>TRACTOR LEASE</td>
<td>1,176</td>
<td>14,116</td>
<td>16,000</td>
<td>1,884</td>
<td>16,000</td>
</tr>
<tr>
<td>MISCELLANEOUS</td>
<td>138</td>
<td>10,079</td>
<td>20,000</td>
<td>9,921</td>
<td>20,000</td>
</tr>
<tr>
<td><strong>TOTAL PUBLIC WORKS</strong></td>
<td>33,426</td>
<td>827,389</td>
<td>900,780</td>
<td>73,391</td>
<td>900,780</td>
</tr>
</tbody>
</table>

PARKS AND RECREATION

<table>
<thead>
<tr>
<th>Description</th>
<th>Current Month</th>
<th>Year to Date Actual</th>
<th>Year to Date Budget</th>
<th>Year to Date Variance</th>
<th>Annual Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>PARK DEVELOPMENT</td>
<td>64</td>
<td>160,516</td>
<td>350,000</td>
<td>189,484</td>
<td>350,000</td>
</tr>
<tr>
<td>PARK MAINTENANCE</td>
<td>0</td>
<td>8,108</td>
<td>0</td>
<td>8,108</td>
<td>0</td>
</tr>
<tr>
<td>Poudre Trailhead Park</td>
<td>0</td>
<td>5,725</td>
<td>200,000</td>
<td>194,275</td>
<td>200,000</td>
</tr>
<tr>
<td>Poudre Trail-Regional-CONTRIBUTION TO COUNTY</td>
<td>0</td>
<td>0</td>
<td>143,130</td>
<td>143,130</td>
<td>143,130</td>
</tr>
<tr>
<td>Poudre Trail-Regional-Design Timnath</td>
<td>0</td>
<td>0</td>
<td>25,000</td>
<td>25,000</td>
<td>25,000</td>
</tr>
<tr>
<td>Poudre River Trail-Corridor Project</td>
<td>0</td>
<td>0</td>
<td>79,797</td>
<td>79,797</td>
<td>79,797</td>
</tr>
<tr>
<td>Timnath South Park</td>
<td>0</td>
<td>2,048</td>
<td>95,175</td>
<td>93,128</td>
<td>95,175</td>
</tr>
<tr>
<td>Reservoir Lease</td>
<td>8,961</td>
<td>116,333</td>
<td>104,000</td>
<td>(12,333)</td>
<td>104,000</td>
</tr>
<tr>
<td><strong>TOTAL PARKS AND RECREATION</strong></td>
<td>8,424</td>
<td>292,730</td>
<td>997,102</td>
<td>704,372</td>
<td>997,102</td>
</tr>
</tbody>
</table>

These financial statements should be read only in connection with the accompanying accountant's compilation report.
<table>
<thead>
<tr>
<th>CAPITAL OUTLAY</th>
<th>CURRENT MONTH</th>
<th>YEAR TO DATE ACTUAL</th>
<th>YEAR TO DATE BUDGET</th>
<th>YEAR TO DATE VARIANCE</th>
<th>ANNUAL BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td>DOLA LOAN</td>
<td>0</td>
<td>70,112</td>
<td>70,112</td>
<td>0</td>
<td>70,112</td>
</tr>
<tr>
<td>HARMONY ROAD PHASE IIA</td>
<td>3,849</td>
<td>2,054,724</td>
<td>2,548,000</td>
<td>493,276</td>
<td>2,548,000</td>
</tr>
<tr>
<td>BOXELDER</td>
<td>500</td>
<td>7,681</td>
<td>50,000</td>
<td>42,319</td>
<td>50,000</td>
</tr>
<tr>
<td>OLD TOWN SEWER</td>
<td>0</td>
<td>12,621</td>
<td>135,000</td>
<td>122,379</td>
<td>135,000</td>
</tr>
<tr>
<td>PUBLIC SAFETY 4 WHEEL DRIVE</td>
<td>0</td>
<td>45,645</td>
<td>54,000</td>
<td>8,355</td>
<td>54,000</td>
</tr>
<tr>
<td>TDA SALES TAX TRANSFER</td>
<td>0</td>
<td>265,549</td>
<td>507,925</td>
<td>242,376</td>
<td>507,925</td>
</tr>
<tr>
<td>PUBLIC WORKS EQUIPMENT</td>
<td>0</td>
<td>52,456</td>
<td>50,000</td>
<td>(2,456)</td>
<td>50,000</td>
</tr>
<tr>
<td>WEBSITE UPGRADE</td>
<td>0</td>
<td>0</td>
<td>100,000</td>
<td>100,000</td>
<td>100,000</td>
</tr>
<tr>
<td>SUMMERFIELD PKY DITCH CROSSING</td>
<td>0</td>
<td>0</td>
<td>60,000</td>
<td>60,000</td>
<td>60,000</td>
</tr>
<tr>
<td>OFFSITE SEWER EXTENSION</td>
<td>2,898</td>
<td>466,381</td>
<td>1,324,000</td>
<td>857,619</td>
<td>1,324,000</td>
</tr>
<tr>
<td>EMERGENCY PREPAREDNESS</td>
<td>0</td>
<td>0</td>
<td>30,000</td>
<td>30,000</td>
<td>30,000</td>
</tr>
<tr>
<td>RIVERBEND ENTRY ROAD</td>
<td>0</td>
<td>83,224</td>
<td>1,680,000</td>
<td>1,596,776</td>
<td>1,680,000</td>
</tr>
<tr>
<td>PUBLIC SAFETY LAPTOPS</td>
<td>0</td>
<td>10,758</td>
<td>12,500</td>
<td>1,742</td>
<td>12,500</td>
</tr>
<tr>
<td>SIGNAL THREE BELL &amp; HARMONY</td>
<td>0</td>
<td>57,721</td>
<td>0</td>
<td>(57,721)</td>
<td>0</td>
</tr>
<tr>
<td>DEVELOPMENT REVIEW</td>
<td>87,447</td>
<td>184,972</td>
<td>125,000</td>
<td>(59,972)</td>
<td>125,000</td>
</tr>
<tr>
<td>TOTAL CAPITAL OUTLAY</td>
<td>94,693</td>
<td>3,311,844</td>
<td>6,746,537</td>
<td>3,434,693</td>
<td>6,746,537</td>
</tr>
</tbody>
</table>

TOTAL EXPENDITURES

<table>
<thead>
<tr>
<th>CURRENT MONTH</th>
<th>YEAR TO DATE ACTUAL</th>
<th>YEAR TO DATE BUDGET</th>
<th>YEAR TO DATE VARIANCE</th>
<th>ANNUAL BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL CAPITAL OUTLAY</td>
<td>94,693</td>
<td>3,311,844</td>
<td>6,746,537</td>
<td>3,434,693</td>
</tr>
<tr>
<td>TOTAL EXPENDITURES</td>
<td>269,926</td>
<td>6,085,576</td>
<td>10,427,870</td>
<td>4,342,294</td>
</tr>
</tbody>
</table>

These financial statements should be read only in connection with the accompanying accountant’s compilation report.
## SPECIAL REVENUE FUND - GRANTS

### REVENUE

<table>
<thead>
<tr>
<th>Current Month</th>
<th>Year to Date Actual</th>
<th>Year to Date Budget</th>
<th>Year to Date Variance</th>
<th>Annual Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>STATE GRANTS</td>
<td>0</td>
<td>68,235</td>
<td>(68,235)</td>
<td>68,235</td>
</tr>
<tr>
<td>FEDERAL GRANTS</td>
<td>837,114</td>
<td>1,094,591</td>
<td>(301,956)</td>
<td>1,396,547</td>
</tr>
<tr>
<td>TOTAL REVENUE</td>
<td>837,114</td>
<td>1,094,591</td>
<td>(370,191)</td>
<td>1,464,782</td>
</tr>
</tbody>
</table>

### EXPENDITURES

| TOTAL EXPENDITURES | 0 | 0 | 0 | 0 | 0 |

### EXCESS OF REVENUE OVER (UNDER) EXPENDITURES

| 837,114 | 1,094,591 | 1,464,782 | (370,191) | 1,464,782 |

### OTHER FINANCING SOURCES (USES)

| TRANSFERS OUT       | (837,114) | (1,094,591) | (1,464,782) | 370,191 | (1,464,782) |
| TOTAL OTHER FINANCING SOURCES (USES) | (837,114) | (1,094,591) | (1,464,782) | 370,191 | (1,464,782) |

### EXCESS OF REVENUE AND OTHER FINANCING SOURCES OVER (UNDER) EXPENDITURES AND OTHER FINANCING USES

| 0 | 0 | 0 | 0 | 0 |

### FUND BALANCE-BEGINNING

| 0 | 4,000 | 0 | 4,000 | 0 |

### FUND BALANCE-ENDING

| 0 | 4,000 | 0 | 4,000 | 0 |

These financial statements should be read only in connection with the accompanying accountant’s compilation report.
TIMNATH DEVELOPMENT AUTHORITY (TDA)
STATEMENT OF REVENUE, EXPENDITURES AND
CHANGES IN FUND BALANCES - ACTUAL AND BUDGET
FOR THE 12 MONTHS ENDING DECEMBER 31, 2013
DEBT SERVICE FUND

<table>
<thead>
<tr>
<th></th>
<th>CURRENT MONTH</th>
<th>YEAR TO DATE ACTUAL</th>
<th>YEAR TO DATE BUDGET</th>
<th>YEAR TO DATE VARIANCE</th>
<th>ANNUAL BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>REVENUE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TIF</td>
<td>0</td>
<td>2,216,078</td>
<td>1,919,393</td>
<td>296,685</td>
<td>1,919,393</td>
</tr>
<tr>
<td>INTEREST INCOME</td>
<td>341</td>
<td>4,918</td>
<td>11,000</td>
<td>(</td>
<td>6,082)</td>
</tr>
<tr>
<td>INTERGOVERNMENTAL-TOWN OF TIMNATH</td>
<td>0</td>
<td>265,549</td>
<td>507,925</td>
<td>(</td>
<td>242,376)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>341</td>
<td>2,486,545</td>
<td>2,438,318</td>
<td>48,227</td>
<td>2,438,318</td>
</tr>
</tbody>
</table>

|                             |               |                     |                     |                        |               |
| **EXPENDITURES**            |               |                     |                     |                        |               |
| MISCELLANEOUS               | 4,637         | 10,510              | 0                   | (                      | 10,510)      |
| INTEREST EXPENSE            | 539,151       | 1,070,818           | 1,171,575           | 100,757                | 1,171,575     |
| PRINCIPAL PAYMENTS          | 1,180,000     | 1,180,000           | 1,180,000           | 0                      | 1,180,000     |
| TOWN OF TIMNATH REVENUE TRANSFER | 0             | 1,621,743           | 1,621,743           | 0                      | 1,621,743     |
| **TOTAL**                   | 1,723,788     | 2,261,328           | 3,973,318           | 1,711,990              | 3,973,318     |

|                             |               |                     |                     |                        |               |
| **EXCESS OF REVENUE OVER (UNDER) EXPENDITURES** | (1,723,447) | 225,217             | (1,535,000)          | 1,760,217             | (1,535,000)   |

|                             |               |                     |                     |                        |               |
| **OTHER FINANCING SOURCES (USES)** |         |                     |                     |                        |               |
| LOAN ISSUANCE               | 0             | 1,535,000           | 1,535,000           | 0                      | 1,535,000     |
| TRANSFERS OUT               | 0             | (1,403,452)         | 0                   | (1,403,452)            | 0             |
| **TOTAL OTHER OTHER FINANCING SOURCES (USES)** | 0         | 131,548             | 1,535,000           | (1,403,452)            | 1,535,000     |

|                             |               |                     |                     |                        |               |
| **EXCESS OF REVENUE AND OTHER FINANCING SOURCES OVER (UNDER) EXPENDITURES AND OTHER FINANCING USES** | (1,723,447) | 356,764             | 0                   | 356,764             | 0             |
| FUND BALANCE-BEGINNING      | 0             | 3,584,582           | 2,163,700           | 1,420,882              | 2,163,700     |
| **FUND BALANCE-ENDING**    | (1,723,447)   | 3,941,346           | 2,163,700           | 1,777,646              | 2,163,700     |

*These financial statements should be read only in connection with the accompanying accountant's compilation report.*
<table>
<thead>
<tr>
<th>Account</th>
<th>Initial Balance</th>
<th>Initial Balance as of 01/31/2014</th>
<th>Adjustments</th>
</tr>
</thead>
<tbody>
<tr>
<td>First National Bank - Checking</td>
<td>$358,643.98</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Checks through 2/20/2014 #1000942-1000977</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>February electronic payments</td>
<td>(159,138.16)</td>
<td></td>
<td>Includes PERA contribution, tractor lease payment, etc.</td>
</tr>
<tr>
<td>Payroll for February 18, 2014</td>
<td>(15,030.21)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deposits as of 2/20/2014</td>
<td>228,669.58</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anticipated February checks - 2/25/2014</td>
<td>(71,066.65)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anticipated cash available as of 2/20/2014</td>
<td>320,155.83</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ColoTrust Plus</td>
<td>$8,543,674.13</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance as of 01/31/2014 0.26%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deposits through 2/20/2014</td>
<td>112,137.43</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anticipated cash available as of 2/20/2014</td>
<td>8,655,811.56</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compass Bank - Loan Payment Account</td>
<td>$934.22</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance as of 01/31/2014</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anticipated cash available as of 2/20/2014</td>
<td>934.22</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compass Bank - Revenue Account</td>
<td>$241,335.06</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance as of 01/31/2014</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anticipated cash available as of 2/20/2014</td>
<td>241,335.06</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compass Bank - Reserve Account</td>
<td>$2,199,664.41</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance as of 01/31/2014</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anticipated cash available as of 2/20/2014</td>
<td>2,199,664.41</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compass Bank - Project Fund</td>
<td>$1,499,862.99</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance as of 01/31/2014</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anticipated cash available as of 2/20/2014</td>
<td>1,499,862.99</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total cash and investments as of February 20, 2014</td>
<td>$12,917,764.07</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
# TOWN OF TIMNATH
## Schedule of Cash Position
### January 31, 2014
### Updated as of February 20, 2014
### Continued

**Cash and investments restricted and designated for:**

### Designated
- **Streets**: $18,501.65
  - Funds can be used for street improvements, planning, design, operations & maintenance

### Restricted
- **1/4 cent sales tax**: $328,847.55
  - Funds can be used for open space acquisition & preservation of public open space
- **Conservation trust fund**: $29,559.58
  - Funds can be used for acquisition, development & maintenance for park and recreation
- **Impact Fee - Police**: $93,258.63
  - Capital only related to Public Safety
- **Impact Fee - Parks**: $2,143,918.40
  - Capital only related to Parks
- **Impact Fee - Streets**: $46,359.00
  - Capital only related to Streets
- **Impact - Storm**: $789,949.01
  - Capital only related to Storm
- **Wild Wing**: $115,500.00
  - Building Permit fees specific to Wild Wing
- **Off Site Storm**: $109,000.00
  - Off site storm work
- **Off Site Street**: $109,000.00
  - Off site street work
- **Letter of Credit**: $44,452.90
  - Letter of Credit for Timnath South
- **Website Grant**: $4,000.00
  - Grant for the development of user friendly website
- **Capital Project Fund**: $181,432.42
  - Unspent new loan proceeds to be used for capital; original amount of $1.5 million was committed to
- **TDA - Capital Project Fund**: $1,499,862.99
  - Available to draw from Compass Bank for capital funding-to be used for Riverbend Project
- **TDA - TIF reimbursement**: $77,448.14
  - Pass through of property taxes to Compass Bank, County and Special Districts
- **TDA - Poudre Valley Fire**: $1,223,078.20
  - Pass through of property taxes for Fire District
- **Compass Bank - Loan**: $2,441,933.69
  - Restricted revenues pledged to debt and reserve account

**Total restricted and designated cash and investments as of February 20, 2014**: $9,266,489.16

**Unrestricted Fund Balance as of February 20, 2014**: $3,651,274.91

This financial information should be read only in connection with the accompanying accountant's compilation report.
General Fund - Revenue Sources
December 31, 2013

<table>
<thead>
<tr>
<th>Revenue Source</th>
<th>YTD Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxes</td>
<td>$3,104,788</td>
</tr>
<tr>
<td>Intergovernmental</td>
<td>449,306</td>
</tr>
<tr>
<td>Licenses, fees and charges</td>
<td>2,015,719</td>
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<td>Franchise fees</td>
<td>87,026</td>
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<td>Fines and Forfeitures</td>
<td>6,962</td>
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<tr>
<td>Other</td>
<td>32,377</td>
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<tr>
<td><strong>Total</strong></td>
<td>$5,696,177</td>
</tr>
</tbody>
</table>

This financial information should be read only in connection with the accompanying accountant’s compilation report.
| Tax Breakdown - General Fund and TDA  
| December 31, 2013 |

### General Fund

<table>
<thead>
<tr>
<th>Tax Type</th>
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<tbody>
<tr>
<td>General Property Taxes</td>
<td>$39,538</td>
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<tr>
<td>Auto Tax (Specific Ownership)</td>
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<td>General Sales and Use Tax</td>
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<td>Timnath Building Use Tax</td>
<td>$877,995</td>
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<td>MV Sales Tax</td>
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### TDA

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### Tax Breakdown

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<tr>
<th>Month</th>
<th>General Property Taxes</th>
<th>Auto Tax (Specific Ownership)</th>
<th>General Sales and Use Tax</th>
<th>Timnath Building Use Tax</th>
<th>MV Sales Tax</th>
<th>Total</th>
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<tbody>
<tr>
<td>Jan-13</td>
<td>-</td>
<td>-</td>
<td>$100,000</td>
<td>$200,000</td>
<td>$300,000</td>
<td>$500,000</td>
</tr>
<tr>
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<td>$100,000</td>
<td>-</td>
<td>$200,000</td>
<td>$300,000</td>
<td>$400,000</td>
<td>$700,000</td>
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<tr>
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<td>$200,000</td>
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<td>$300,000</td>
<td>$400,000</td>
<td>$500,000</td>
<td>$800,000</td>
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<tr>
<td>Apr-13</td>
<td>$300,000</td>
<td>$200,000</td>
<td>$400,000</td>
<td>$500,000</td>
<td>$600,000</td>
<td>$900,000</td>
</tr>
<tr>
<td>May-13</td>
<td>$400,000</td>
<td>$300,000</td>
<td>$500,000</td>
<td>$600,000</td>
<td>$700,000</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Jun-13</td>
<td>$500,000</td>
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<td>$600,000</td>
<td>$700,000</td>
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<tr>
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<tr>
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<td>$900,000</td>
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<td>$1,100,000</td>
<td>$1,400,000</td>
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<td>$1,100,000</td>
<td>$1,200,000</td>
<td>$1,500,000</td>
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This financial information should be read only in connection with the accompanying accountant's compilation report.
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<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>% change</th>
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<tr>
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<td>131,034</td>
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<td>171,814</td>
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<td>May</td>
<td>156,218</td>
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<tr>
<td>June</td>
<td>172,915</td>
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<tr>
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<tr>
<td>August</td>
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<tr>
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<td>154,289</td>
<td>163,579</td>
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<tr>
<td>November</td>
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<tr>
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<td><strong>3.87%</strong></td>
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This financial information should be read only in connection with the accompanying accountant’s compilation report.

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<tr>
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<th>% change</th>
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<tbody>
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<td>-36.36%</td>
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<tr>
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<tr>
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<td>May</td>
<td>14</td>
<td>13</td>
<td>-7.14%</td>
</tr>
<tr>
<td>June</td>
<td>15</td>
<td>13</td>
<td>-13.33%</td>
</tr>
<tr>
<td>July</td>
<td>11</td>
<td>15</td>
<td>36.36%</td>
</tr>
<tr>
<td>August</td>
<td>11</td>
<td>19</td>
<td>72.73%</td>
</tr>
<tr>
<td>September</td>
<td>15</td>
<td>21</td>
<td>40.00%</td>
</tr>
<tr>
<td>October</td>
<td>7</td>
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<tr>
<td>November</td>
<td>18</td>
<td>3</td>
<td>-83.33%</td>
</tr>
<tr>
<td>December</td>
<td>11</td>
<td>7</td>
<td>-36.36%</td>
</tr>
<tr>
<td>Total</td>
<td>141</td>
<td>166</td>
<td>17.73%</td>
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</tbody>
</table>
This financial information should be read only in connection with the accompanying accountant’s compilation report.
# TOWN COUNCIL COMMUNICATION

**Meeting Date:** February 25, 2014  
**Presented by:** Don Taranto  
**Item:** Engineering & Public Works Report  
**Ordinance □**  
**Resolution □**  
**For Information X**

**KEY POINTS/SUPPORTING INFORMATION:**

1. **Old Town Improvement Project / Offsite Sewer**
   a. Plans have been approved by the District. The Change Order with the contractor has been prepared and is awaiting final signature. Preconstruction meetings are being scheduled for next week with construction hopefully getting underway the first part of March.

2. **Riverbend Infrastructure**
   a. Plans are ready to be approved by the District. Final pricing has been received from the contractor for review.
   b. Additional meetings with Riverbend and Gerrard Excavating have been held and a project schedule is being developed. A 1st amendment to the public improvement agreement is being drafted by the Town’s attorney and is under review.

3. **Development Construction Activities**
   a. Timnath South Phase 4 (remainder) – Curb, gutter, and sidewalk are complete for the first phase. A portion of 2 streets were able to get bottom lift of asphalt and therefore Substantial Completion allowing for the issuance of building permits.
   b. Timnath South Community Center – Building construction is underway.
   c. Timnath Ranch 1st – Construction of Phase 1 thru bottom lift of asphalt is complete which will allow for issuance of building permits but not CO’s
   d. Harmony 4th Filing – Construction thru top lift of asphalt is complete. Full Initial Acceptance has been granted
   e. Harmony Club – Overlot grading complete. Pending recordation of Final Plat for utility installation.

4. **CR 1 and 40 Repairs**
   a. Road damage on CR 1 and 40 will continue to be patched with temporary materials until it is warm enough this spring to repair.

5. **Weitzel Street/Costco Site**
   a. Weitzel Street has been closed to traffic and construction of the deep utilities has started.

**ATTACHMENTS:** None
TOWN COUNCIL COMMUNICATION

Meeting Date:
February 25, 2014

Item:
Community Development Report

Presented by:
Matt Blakely

Ordinance □
Resolution □
Discussion □
For Information X

KEY POINTS/SUPPORTING INFORMATION:

1. Issued Building Permits:
   2011 Single-Family Residential Total = 132
   2012 Single-Family Residential Total = 141
   2013 Single-Family Residential Total = 166
   2014 Single-Family Residential January = 14
   2014 Single-Family Residential MTD = 5
   2014 Single-Family Residential YTD (1/1/14 to 02/12/14) = 19

2. Current Development Actions:
   a. NoCo Storage Site Plan: This application is for a site plan and administrative plat. The
      administrative plat is to remove interior lot lines, creating one large lot. The site plan
      application is for 46,150 sf of self storage units on a 3.1 acre site. A conditional use was
      previously approved and development will conform with the stipulations listed in those
      documents. This is located at Lots 4, 5, and 6, Block 1 Timnath Ranch Subdivision 4th Filing,
      4925, 4949, and 4973 Goodman Street. The applicant has submitted the administrative plat
      and site plan documents to the Town and they are currently being reviewed by staff.
   b. Wildwing Replat E: This application is for an administrative plat to make small adjustments
      in a few of the building envelopes for the Wildwing Patio homes. This is currently under
      review by staff and referral agencies.

3. Projects:
   a. Land Use Code Update: Staff continues to review draft language and will be meeting with
      the Orion Planning Group in the upcoming months.
   b. Timnath South Park: Staff is currently working on community outreach materials and a
      community meeting is tentatively planned for March 13th, 2014.
   c. Harmony Median Landscape Improvements: Staff is beginning to develop landscape
      concepts for the Harmony Road Medians.
   d. Weitzel Median Landscape Improvements: Staff is beginning to develop landscape
      concepts for the Weitzel Street Medians.
   e. Gateway Park: Staff is beginning work on the design for the Gateway Park located next to
      Wal-Mart. Staff is also meeting with the Department of Wildlife to discuss the stocking and
      management of fish for the pond.
   f. Fishing is Fun Grant: Staff will be submitting to the Colorado Parks and Wildlife
      Department for a Fishing is Fun grant on or before March 5th, 2014.

ADVANTAGES:
N/A

DISADVANTAGES:
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<th>FINANCIAL IMPACT:</th>
<th>N/A</th>
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<tr>
<td>RECOMMENDATIONS:</td>
<td>N/A</td>
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<tr>
<td>ATTACHMENTS:</td>
<td>1.  Building Department Statistics</td>
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MEMORANDUM

TO: Timnath Town Council
FROM: Matt Blakely, Town Planner
       Sherry Snyder, Building Permit Technician
RE: Timnath Single-Family Building Permits - YTD 02/12/14
DATE: February 25, 2014

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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th># Permits Issued in 2012 for Single Family Homes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Jan</td>
<td>Feb</td>
<td>March</td>
<td>April</td>
<td>May</td>
<td>June</td>
<td>July</td>
<td>Aug</td>
<td>Sept</td>
<td>Oct</td>
<td>Nov</td>
</tr>
<tr>
<td>Single Family Home</td>
<td>11</td>
<td>7</td>
<td>13</td>
<td>8</td>
<td>14</td>
<td>15</td>
<td>11</td>
<td>11</td>
<td>15</td>
<td>7</td>
<td>18</td>
</tr>
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<table>
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<th></th>
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<th></th>
<th></th>
<th># Permits Issued in 2013 for Single Family Homes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Jan</td>
<td>Feb</td>
<td>March</td>
<td>April</td>
<td>May</td>
<td>June</td>
<td>July</td>
<td>Aug</td>
<td>Sept</td>
<td>Oct</td>
<td>Nov</td>
</tr>
<tr>
<td>Single Family Home</td>
<td>7</td>
<td>22</td>
<td>24</td>
<td>14</td>
<td>13</td>
<td>13</td>
<td>15</td>
<td>19</td>
<td>21</td>
<td>8</td>
<td>3</td>
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<td></td>
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</table>

Foundation Only Permit-3
Modular Home-1
Commercial-2

|       | 2014 |       |       |       |       |       |       | # Permits Issued in 2014 for Single Family Homes |
|-------|------|-------|-------|-------|-------|-------|-----------------------------------------------|
|       | Jan  | Feb  | March | April | May   | June  | July  | Aug   | Sept  | Oct   | Nov   | Dec | 19 |
|       | 14   | 5    |       |       |       |       |       |       |       |       |       |     |   |

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<th>2012</th>
<th>2013</th>
<th>2014</th>
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<tr>
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Foundation Only Permit 3
Modular Home 1
Commercial 2
TOWN COUNCIL COMMUNICATION

<table>
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<tr>
<th>Meeting Date: 2/25/2014</th>
<th>Item: January 2014 Law Enforcement Update</th>
<th>For Information</th>
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</thead>
<tbody>
<tr>
<td>Presented by: Sherri Wagner</td>
<td></td>
<td></td>
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</table>

1) Mandatory purchasing procedure meeting
2) Updated hiring process
3) Officer evaluation
4) Chiefs meeting
5) Agenda/Staff/One on One meetings
6) Patrol cars scheduled for new decals
7) MVAI with Severe Injuries – Harmony/Main
8) Assist to Homeland Security - suspected illicit prescription drug transaction
9) Several cold theft cases from December, 2013 presented by Walmart staff
<table>
<thead>
<tr>
<th>Call Type</th>
<th>Count</th>
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<tbody>
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<tr>
<td>Animal</td>
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</tr>
<tr>
<td>Assist Other</td>
<td>4</td>
</tr>
<tr>
<td>Directed Patrol/School/Extra</td>
<td>7</td>
</tr>
<tr>
<td>Follow-up</td>
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</tr>
<tr>
<td>Lost/found Property</td>
<td>1</td>
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<tr>
<td>Vehicle Accident/injury</td>
<td>1</td>
</tr>
<tr>
<td>Vehicle Accident/non-inj</td>
<td>4</td>
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<tr>
<td>Suspicious Circumstance</td>
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<td><strong>Total Incidents</strong></td>
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<td>TPD MISCELLANEOUS</td>
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<td>Citizen inquiries/Phone msgs</td>
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<tr>
<td>Code Enforcement/Animal</td>
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<tr>
<td>DA/Chief's Meeting</td>
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<tr>
<td>Daily Training Bulletin Review</td>
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<td>Emergency Operation Plan</td>
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<td>Yearly Eval</td>
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<td>Extra Patrols</td>
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<td>LCSO LE Contract</td>
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<td>Motor Vehicle Accident Reports (each 2 hours)</td>
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<td>Municipal Court</td>
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<td>NIBRS/Numbers to CBI/FBI</td>
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<td>Motor Vehicle Accident</td>
<td>1</td>
</tr>
<tr>
<td>Subject Contact/Transient</td>
<td>1</td>
</tr>
<tr>
<td>Private Tow</td>
<td>1</td>
</tr>
<tr>
<td>Reddi</td>
<td>1</td>
</tr>
<tr>
<td>Theft</td>
<td>1</td>
</tr>
<tr>
<td>Traffic</td>
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</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>62</strong></td>
</tr>
<tr>
<td><strong>LCSO ASSIGNED CASES</strong></td>
<td><strong>4</strong></td>
</tr>
</tbody>
</table>
# TOWN COUNCIL COMMUNICATION

<table>
<thead>
<tr>
<th>Meeting Date: 2/25/14</th>
<th>Item: Town Manager Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Presented by:</td>
<td>April D. Getchius, AICP</td>
</tr>
<tr>
<td></td>
<td>Town Manager</td>
</tr>
</tbody>
</table>

## KEY POINTS/SUPPORTING INFORMATION:

- Attended the first annual Poudre River Forum on February 8, 2014. Mayor Pro Tem Bryan Voronin read from the history of Timnath along with other town mayors.
- Attended the annual NCEDC meeting.
- Attended the Poudre Fire Authority Awards Banquet on February 7.
- Will be attending the Colorado City/County Managers Association meeting February 20-22.
- Attended the Colorado Municipal League Legislative workshop on February 13. It was very helpful to learn of any pending legislation that could impact the Town.
- Working toward completion of staff annual evaluations.
- Continue to meet with Fort Collins city staff to complete the IGA for March adoption.
- Will be meeting with the Poudre School District Superintendent in March.
- Working with legal, finance and public works to finalize agreements related to area developments.
- Website re-design is underway. Staff will be presenting changes to the Town Council in the upcoming months.
EXECUTIVE SUMMARY:

On December 10, 2013 at their regular meeting the Town of Timnath Town Council passed Resolution 44, Series 2013 unanimously, initiating annexation proceedings.

On January 7, 2014 at their regular meeting the Town of Timnath Planning Commission passed Resolution 1, Series 2014 unanimously without conditions. This Planning Commission Resolution recommends approval of the annexation to the Town Council.

On January 14, 2014 the Town of Timnath Town Council found that the annexation is in compliance with the requirements of the Act and the Town of Timnath Land Use Code; and that an election is not required under the Act; and that no additional terms and conditions are to be imposed, at the conclusion of the public hearing the Council adopted Resolution No. 2, Series 2014 containing the findings of fact and conclusions.


This annexation consists of a 105.36 acre parcel of land currently residing in Larimer County. The property is located to the south of and adjacent to CR 36/River Pass Road, and west of and adjacent to Three Bell Parkway. The applicant is proposing 202 units for a density of approximately 2 DU/per acre, which is consistent with the Town’s Adopted Comprehensive Plan. This will create a new residential development parcel in the Town of Timnath. The petition has been reviewed against all applicable local code requirements and the Colorado Revised Statutes

STAFF RECOMMENDATION:

Staff has reviewed the application, annexation petition, and annexation agreement and has determined that all the elements required by statute are present for annexation. All comments received from governmental entities affected by the annexation are included in this communication. Staff recommends the approval of this ordinance to annex the aforementioned property.

KEY POINTS/SUPPORTING INFORMATION:

Owner: Grant and Gregory Brunner, GL Brunner Farms, LLC and Timnath Holdings, LLC
Applicant: Jim Birdsall, The Birdsall Group
Application Type: Annexation Case Number: AX-2013-001
# Process Schedule

<table>
<thead>
<tr>
<th>Task</th>
<th>Description</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-application</td>
<td>With property owner, Mayor, and town staff</td>
<td>07/19/13</td>
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<tr>
<td>Application Submitted</td>
<td></td>
<td>08/16/13</td>
</tr>
<tr>
<td>Acceptance of Application</td>
<td></td>
<td>08/20/13</td>
</tr>
<tr>
<td>Town Council</td>
<td>Substantial compliance</td>
<td>12/02/13</td>
</tr>
<tr>
<td>Referral Agency Notification</td>
<td>Referral comments were due by 09/13/13.</td>
<td>08/20/13</td>
</tr>
<tr>
<td>Comments Issued</td>
<td></td>
<td>10/02/13</td>
</tr>
<tr>
<td>Notices</td>
<td>Signs posted on property</td>
<td>01/02/14</td>
</tr>
<tr>
<td>Notices</td>
<td>Notifications posted at Town of Timnath and Post Office</td>
<td>12/20/13</td>
</tr>
<tr>
<td></td>
<td>Notifications in Fort Collins Coloradoan</td>
<td>12/13; 12/20; 12/27; 01/03/14; 01/10/14</td>
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<tr>
<td>Planning Commission</td>
<td>Public hearing</td>
<td>01/07/14</td>
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<tr>
<td>Town Council</td>
<td>Eligibility hearing</td>
<td>01/14/14</td>
</tr>
<tr>
<td>Town Council</td>
<td>First reading, Annexation and Zoning</td>
<td>01/28/14</td>
</tr>
<tr>
<td>Town Council</td>
<td>Second reading and Public Hearing, Annexation and Zoning</td>
<td>02/25/14</td>
</tr>
</tbody>
</table>

**Location:** South of and adjacent to CR 36/River Pass Road, and west of and adjacent to Three Bell Parkway

**Parcel Size (Acres):** Approximately 108.44 acres

**Existing Zoning:** FA-1  
**Proposed Zoning:** R-2, Single Family Residential And M-U, Mixed Use

**Existing Land Use:** Vacant  
**Proposed Land Use:** Single Family Residential

**SERVICES:**
- **Water:** Fort Collins – Loveland Water District
- **Sewer:** South Fort Collins Sanitation District
- **Fire:** Poudre Fire Authority
- **Special Districts:** None

**Adjacent Zoning/Land Uses:**

<table>
<thead>
<tr>
<th>Direction</th>
<th>Zoning</th>
<th>Land Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>CR 36; Agricultural (FA-1)</td>
<td>Residential/farming</td>
</tr>
<tr>
<td>South</td>
<td>Agricultural (FA-1)</td>
<td>Residential/farming</td>
</tr>
<tr>
<td>East</td>
<td>C-2 and R-2; Three Bell Parkway</td>
<td>Community Commercial and Residential</td>
</tr>
<tr>
<td>West</td>
<td>Agricultural (FA-1)</td>
<td>Residential/farming</td>
</tr>
</tbody>
</table>
**ADVANTAGES:**
- The addition of this parcel to the Town of Timnath will be consistent with the existing residential character of the Town of Timnath
- Consistent with the Town of Timnath Comprehensive Plan
- Increase in the amount of residential land within the Town of Timnath GMA

**DISADVANTAGES:**
- Increase in services supplied by Town
- Increase in road infrastructure requiring Town maintenance

**FINANCIAL IMPACT:**
- Increase in use tax and property taxes

**PLANNING COMMISSION RECOMMENDATION:**
On January 7, 2014 the Planning Commission unanimously recommended to Town Council approval of this annexation ordinance.

**RECOMMENDED MOTION:**
- I move to approve Ordinance No. 1, Series 2014, an ordinance to annex the property known as the Brunner Farm Annexation, as it meets all applicable criteria.

**ATTACHMENTS:**
1. Annexation Impact Report
2. Annexation Petition
3. Ordinance 1, Series 2014
   a. Exhibit A – Legal Description of Annexed Property
   b. Exhibit B – Annexation Map
   c. Exhibit C – Annexation Agreement
AN ORDINANCE APPROVING THE ANNEXATION OF CERTAIN REAL PROPERTY TO BE KNOWN AS THE BRUNNER FARM ANNEXATION TO THE TOWN OF TIMNATH, COLORADO, GENERALLY LOCATED SOUTH OF AND ADJACENT TO CR 36/RIVER PASS ROAD, AND WEST OF AND ADJACENT TO THREE BELL PARKWAY

WHEREAS, a petition (the “Petition”) for Annexation was filed with the Town by GL Brunner Farms, LLC (“Petitioner”), requesting the Town of Timnath annex that property more particularly described in EXHIBIT A (legal description) and EXHIBIT B (annexation map), attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, a properly noticed public hearing was held on January 7, 2014 regarding said Petition in accordance with C.R.S. § 31-12-108, and all persons interested in such Petition were provided an opportunity to be heard: and

WHEREAS, over 50% of the property owners owning more than 50% of the Property, exclusive of streets and alleys have signed the Petition and requested the Property be annexed; and

WHEREAS, the Town Council finds the Property is eligible for annexation and should be annexed to the Town of Timnath; and

WHEREAS, the contiguity required by C.R.S. § 31-12-104(1)(a) exists in that the property annexed hereby has at least one-sixth boundary contiguity with a present municipal boundary of the Town; and

WHEREAS, the Town and Petitioners wish to enter into an annexation agreement (Exhibit C).

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO:

Section 1. Findings.

1. The Council hereby finds that a Petition for Annexation, together with four (4) copies of the annexation map as required by law, was filed with the Town Council on August 16, 2013, by the owners of over fifty percent (50%) of the area of the property hereinafter described in EXHIBIT A (legal description) and EXHIBIT B (annexation map), and comprising more than fifty percent (50%) of the landowners of the property to be annexed, exclusive of public streets and alleys.
2. A properly noticed public hearing was held on January 14, 2014 regarding said Petition in accordance with C.R.S.§ 31-12-108, at which all persons interested in such Petition were provided an opportunity to be heard.

3. The Council by resolution at the public hearing accepted said Petition and found and determined that the applicable parts of the Municipal Annexation Act of 1965, as amended, have been met and further determined that an election was not required under the Act and that no additional terms and conditions were to be imposed upon said annexation.

4. The contiguity required by CRS Sec. 31-12-104(1)(a) exists in that the property annexed hereby has at least one-sixth boundary contiguity with a present municipal boundary of the Town.

5. The Property is eligible for annexation and should be annexed to the Town of Timnath.

6. An Annexation Agreement between the property owners and the Town has been prepared, is incorporated herein, and approved (EXHIBIT C).

**Section 2. Annexation and Annexation Agreement Approved.**

The annexation to the Town of the following described real property is hereby approved (see attached):

Exhibit A – Property Description
Exhibit B – Annexation Map

The Annexation Agreement referenced in section 1 (6) 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, and subject to any further revisions to limitations on vested rights as deemed necessary by Special Counsel.

**Section 3. Severability.**

If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Town Council hereby declares that it would have adopted this Ordinance and each part or parts hereof irrespective of the fact than any one or parts be declared unconstitutional or invalid.

**Section 4. Effective Date.**

This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter. The Town Clerk shall certify to the passage of this
Ordinance and make not less than one copy of the adopted Ordinance available for inspection by the public during regular business hours.


TOWN OF TIMNATH

____________________________________
Bryan Voronin, Mayor Pro Tem

ATTEST:

____________________________________
Milissa Peters, Town Clerk
EXHIBIT A

Legal Description of Property Annexed

[attached]
EXHIBIT B
Annexation Map

[attached]
EXHIBIT C

Annexation Agreement

[attached]
PROPERTY DESCRIPTION  
BRUNNER FARM ANNEXATION TO TIMNATH

That portion of Section Two (2) and Section Eleven (11), Township Six North (T.6N.) Range Sixty-Eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado and being more particularly described as follows:

Considering the North line of the Northeast Quarter of said Section 11 as bearing North 88°35'28" East with all other bearings herein relative thereto:

BEGINNING at the North Quarter Corner of Section 11; thence along the North line of Northeast Quarter of Section 11, North 88° 35' 28" East, 543.04 feet; thence, North 01° 24' 35" West, 30.00 feet to the North right-of-way line of County Road 36; thence along said North line, North 88° 35' 28" East, 1967.75 feet to the West right-of-way line of County Road 3; thence along said West line, South 00° 51' 03" East, 60.00 feet; thence continuing along said West line, South 00° 34' 57" East, 2495.04 feet; thence, North 77° 19' 47" West, 1304.81 feet to a point on the West line of the Southeast Quarter of the Northeast Quarter; thence along said West line, North 00° 11' 36" East, 692.14 feet; thence, North 23° 51' 18" West, 213.43 feet to a point on the South line of the Northwest Quarter of the Northeast Quarter; thence along said South line, South 88° 48' 49" West, 1201.12 feet to the Center North Sixteenth Corner of Section 11; thence along the West line of the Northeast Quarter of Section 11, North 00° 58' 24" East, 1314.70 feet to the Point of Beginning.

The above described tract of land contains 4,723,611 square feet or 108.439 acres more or less and is subject to all easements and right-of-way now on record or existing.
NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years after the date of the certificate shown hereon.

EHTRON RN
PHONE: 970.221.4158  FAX: 970.221.4159
www.northernengineering.com

PROPERTY DESCRIPTION
BRUNNER FARM ANNEXATION TO TIMNATH
That portion of Section Two (2) and Section Eleven (11), Township Six North (T.6N.) Range Sixty-Eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado and being more particularly described as follows:

Considering the North line of the Northeast Quarter of said Section 11 as bearing North 88°35'28" East with all other bearings herein relative thereto:

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The above described tract of land contains 6,723,811 square feet or 108.439 acres more or less and is subject to all easements and right-of-ways shown on record or existing.

BASIS OF BEARINGS
Considering the North line of the Northeast Quarter of said Section 11 as bearing North 88°35'28" East with all other bearings herein relative thereto.

CONTIGUITY

SURVEYOR'S STATEMENT
I, Gerald D. Gilliland, a Colorado Registered Professional Land Surveyor, do hereby state that this map of land proposed to be annexed to the Town of Timnath, County of Larimer, State of Colorado was prepared from an accurate survey under my personal supervision, that the monumentation as indicated hereon were found or set as shown, and that the foregoing plat is an accurate representation thereof, all this to the best of my knowledge, information, belief, and in my professional opinion.

I further state that not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous to the boundary line of the Town of Timnath, County of Larimer, State of Colorado.

_______________________________________
Gerald D. Gilliland
Colorado Registered Professional
Land Surveyor LS # 14823

CERTIFICATE OF APPROVAL BY THE TOWN COUNCIL
Approved this day of 2013, A.D. by the Town Council, Timnath, Colorado

Board of Trustees
BY: ____________________________

State of Colorado)
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this day of 2013, A.D. by ____________________________.

Witness my hand and official seal.

Notary Public

STATE OF COLORADO)
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this day of 2013, A.D. by ____________________________.

Witness my hand and official seal.

My commission expires ____________________________.

_______________________________________
Sunny Rehbein
Colorado Registered Professional
Land Surveyor LS # 14823

TOTAL NUMBER OF LINEAR FEET CONTIGUOUS TO TOWN OF TIMNATH..............................................2555'

TIMNATH PLANNING COMMISSION APPROVAL
The Planning Commission of Timnath, Colorado, does hereby authorize this annexation at a meeting of said commission held on this day of _________ 2013, A.D.

BY: ____________________________
Chair

TOTAL NUMBER OF LINEAR FEET OF PROPERTY TO BE ANNEXED..................................................9822'

TOTAL NUMBER OF ALLOWABLE LINEAR FEET OF PROPERTY TO BE ANNEXED............2555' x 6=15330'

Owner:
By: _________________________________________

STATE OF COLORADO)
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this day of 2013, A.D. by ____________________________.

Witness my hand and official seal.

My commission expires ____________________________.

_______________________________________
Notary Public

The foregoing plat is an accurate representation thereof, all this to the best of my knowledge, information, belief, and in my professional opinion.

I further state that the foregoing plat is an accurate representation thereof, all this to the best of my knowledge, information, belief, and in my professional opinion.

_______________________________________
Notary Public

ADDRESS: 200 South College Avenue, Suite 10
Fort Collins, Colorado  80524
POINT OF BEGINNING
NORTH 14 CORNER
SECTION 11-6-68
FND 3
14 "ALUMINUM CAP, LS 12374
CENTER N 116 CORNER
SECTION 11-6-68
FND 2
12 "ALUMINUM CAP, LS 14823
EAST 14 CORNER
SECTION 11-6-68
FND 2
12 "ALUMINUM CAP, LS 14823
NORTH TIMNATH FARMS ANNEXATION
OWNER: WEIDERSPON
BOUNDARY LINE ADJUSTMENT
AND AMENDED TRACT 2
JELDEN M.L.D. PLAT
NORTHEAST CORNER
SECTION 11-6-68
FND 3
14 "ALUMINUM CAP, LS 14823
NORTHEAST 116 CORNER
SECTION 11-6-68
FND 2
12 "ALUMINUM CAP, LS 14823
FOR YOUR CONVENIENCE:
SOUTH TIMNATH FARMS ANNEXATION
OWNER: CACHE LA POUDRE IRRIGATION
OWNER: WEIDERSPON
BOUNDARY LINE ADJUSTMENT
AND AMENDED TRACT 2
JELDEN M.L.D. PLAT
NORTHEAST CORNER
SECTION 11-6-68
FND 3
14 "ALUMINUM CAP, LS 14823
NORTHEAST 116 CORNER
SECTION 11-6-68
FND 2
12 "ALUMINUM CAP, LS 14823
SOUTH TIMNATH FARMS ANNEXATION
OWNER: DREHLE, JAMES
OWNER: BUCHLEITER, SARA
OWNER: DREHLE EDWIN
OWNER: BUCHLEITER GERALD
SOUTH LINE OF THE NW 14 BASE OF BEARING
WEST LINE OF THE NE 14 BASE OF BEARING
NORTH LINE OF THE NE 14 BASE OF BEARING
WEST LINE OF THE SE 14 BASE OF BEARING
30' 30'
30' 30'
40' WITNESS CORNER
FND #4 REBAR
w/PLASTIC CAP
LS 14823
FND #4 REBAR
w/PLASTIC CAP
LS 14823
FND #4 REBAR
w/PLASTIC CAP
LS 14823
NOTICE:
According to Colorado law you must commence any legal action based
upon any defect in this survey within three years after you discover such
defect. In no event may any action based upon any defect in this survey
be commenced more than ten years after the date of the certificate shown
hereon.

EHTRON RN
PHONE: 970.221.4158      FAX: 970.221.4159
www.northernengineering.com

ANNEXED BOUNDARY
EASEMENT
SECTION LINE
RIGHT-OF-WAY
EXISTING PROPERTY BOUNDARY
CONTIGUOUS BOUNDARY

A TRACT OF LAND LOCATED IN SECTION 2 AND SECTION 11, TOWNSHIP 6 NORTH, RANGE 68 WEST
OF THE 6th PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO

BRUNNER FARM ANNEXATION MAP
A PORTION OF SECTION 11, T6N, R68W
TOWN OF TIMNATH, COLORADO

200 South College Avenue, Suite 10
Fort Collins, Colorado  80524

COUNTY ROAD 3 (80' PUBLIC ROW)
COUNTY ROAD 36 (60' PUBLIC ROW)

NORTH LINE OF THE NE 14 BASIS OF BEARING
N 88° 35' 28" E 2540.70'
N 88° 35' 28" E 30.00'
N 88° 35' 28" E 543.04'
N 00° 58' 24" E 1314.70'
S 88° 48' 49" W 1201.12'
N 23° 51' 18" W 213.43'
N 00° 11' 36" E 692.14'
N 77° 19' 47" W 1304.81'
S 00° 34' 57" E 2495.04'
S 00° 51' 03" E 60.00'
S 88° 35' 28" E 1967.75'
S 00° 34' 57" E 2495.04'
S 00° 51' 03" E 60.00'
S 88° 35' 28" E 2139.75'

Owner: WEIDERSPON
Owner: BUCHLEITER, SARA
Owner: DREHLE, JAMES
Owner: DREHLE EDWIN
Owner: BUCHLEITER GERALD
Owner: CACHE LA POUDRE IRRIGATION
Owner: WEIDERSPON
Owner: WEIDERSPON
Owner: WEIDERSPON
Owner: DREHLE, JAMES
ANNEXATION AGREEMENT
FOR THE BRUNNER FARMS SUBDIVISION

THIS AMENDED AND RESTATED ANNEXATION AGREEMENT ("Agreement"), is made and entered into to be effective the 25th day of February, 2014, by and between Town of Timnath, a Colorado municipal corporation ("Town") and Brunner Farm Holdings, LLC, a ("Property Owner" and collectively, the "Parties") and is made concerning the real property described on Exhibit A, attached hereto and incorporated herein by reference ("the Property"), and generally known as the “Brunner Farms Subdivision”.

WITNESSETH:

WHEREAS, the Property consists of approximately 108 acres, more or less, located West of and immediately adjacent to Larimer County Road #3/Three Bell Parkway and South of immediately adjacent to Larimer County Road #36/River Pass Road.; and

WHEREAS, Town and Property Owner will be entering into a subdivision improvement agreement (the ("SIA"), which will be recorded in the real estate records of Larimer County, Colorado, and which will govern the construction of public improvements on the property and will serve as a condition precedent to approval of by the Town of any future plat or plats associated with the Property; and

WHEREAS, it is the intent of Parties that this Agreement contains all the obligations of Parties which shall be performed by Parties with respect to annexation of the Property.

NOW, THEREFORE, in consideration of the foregoing and the terms, covenants, conditions and provisions hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby confessed and acknowledged, Parties hereto agree as follows:

AGREEMENT

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions for annexation and development of the Property within the Town, and the fees to be paid by Property Owner upon annexation of the Property. All conditions contained herein are in addition to any and all requirements of Town and applicable state statutes, and are not intended to supersede such requirements, except as specifically provided in this Agreement. All exhibits attached hereto are incorporated herein by this reference and are an integral part hereof.

2. Annexation of Property. The Property shall be annexed to Town by ordinance, not by election, in accordance with the terms of this Agreement, including any adjacent and unannexed rights of way, including but not limited to County Road 36, as shown on the annexation map attached hereto as Exhibit B. The annexation of the Property is subject to this Agreement and the Subdivision Improvement Agreement executed contemporaneously herewith.
3. **Zoning and Development of the Property.** The Property will be zoned in part as R-2 Single Family Residential District, and in part MU Mixed Use District. Property Owner will develop the Property in accordance with a final plat to be subsequently approved by the Town. The Property, or any portion thereof, may be rezoned or the Final Plat amended with the consent of Town and Property Owner, but without amending or modifying this Agreement.

4. **Water Utilities.** Property Owner shall obtain water service from the Fort Collins-Loveland Water District.

5. **Sanitary Sewer Utilities.** Property Owner shall obtain sewer service from South Fort Collins Sanitation District.

6. **Utilities and Infrastructure.** Parties recognize that Town does not provide infrastructure to serve the Property and Property Owner will be responsible for extending all utilities and streets to serve the Property. Failure of Property Owner to obtain utilities or provide streets to the Property shall not be grounds for disconnection.

7. **Water and Water Rights.** Property Owner acknowledges that Property Owner shall be required to meet Town Code requirements for irrigation of common areas, open space areas, and parks. Property Owner shall not be required to provide to Town any water or water rights, well or well rights, reservoir or storage rights, stock in mutual ditch and irrigation companies, or any other water or water rights appurtenant to or historically used in connection with the Property except as otherwise set forth herein.

8. **Coordination with Adjacent Properties.** Property Owner shall coordinate with owners of properties within Town adjacent to the Property to provide pedestrian and vehicular access between the Property and the adjacent properties as may be necessary to implement Town’s current transportation plan.

9. **Obligations Run with the Land.** This Agreement and the annexation map shall be recorded in the real estate records of Larimer County and all obligations herein shall run with the land and shall be binding upon and inure to the benefit of Parties hereto and their respective heirs, personal representatives, successors, and, to the extent permitted, assigns as the case may be.

10. **Cure of Legal Defects.** In the event that the annexation or zoning of the Property or any portion of this Agreement, is declared void or unenforceable by final court action, Parties shall cooperate to cure any legal defects cited by the court, and immediately upon such cure, Town shall reinstitute and complete proceedings to annex and zone the Property according to the terms of this Agreement and to otherwise carry out the terms and provisions hereof.

11. **Vested Property Rights.**

   a. **Acknowledgements.** Parties acknowledge the following:
(1) The Property is estimated to have a minimum Ten (10) year build-out period and is expected to be constructed in Five (5) phase[s].

(2) Property Owner will be required to make substantial financial commitments and complete major public infrastructure improvements in the early phases of the development of the Property.

(3) A material consideration of Property Owner’s annexation of the Property and Property Owner’s willingness to develop the Property within Town (rather than developing the Property within the County or another municipality) is Town’s agreement to permit development of the Property in accordance with the terms and conditions of this Agreement and the Final Plat, particularly the vested property rights granted herein.

(4) Property Owner waives any vested property rights which may have been granted by any governmental entity prior to the date of this Agreement.

b. **Vesting of Property Rights.** In recognition of the size of the development contemplated under this Agreement, the substantial financial investment and time required to complete the development of the Property, and the possible impact of economic cycles and varying market conditions during the course of development, Town agrees to grant extended vested property rights in this Agreement pursuant to Section 16.5.2 of the Timnath Municipal Code in accordance with the following “performance vesting” schedule. The initial vesting period for the Property shall be from annexation of the Property through December 31, 2016 (“Vesting Period”). Thereafter extended vested property rights shall be granted according to the following provisions and expressly on the conditions stated herein and in the Subdivision Improvement Agreement executed contemporaneously herewith. Such extended vested property rights shall be available to Property Owner for each “Phase” (defined below) of proposed development of the Property, as depicted in Exhibit C attached hereto and incorporated herein by this reference, shall be subject to vesting of property rights, conditionally and serially, as follows:

The initial Vesting Period shall be through December 31, 2016.

(1) If Phase I is “completed through build-out” by December 31, 2016, the Vesting Period shall be extended through December 31, 2019, on condition that Property Owner applies to Town by December 31, 2016, and receives from Town, in writing, a letter authorized by Town Council concurring that Phase I has been completed through build-out by December 31, 2016.
(2) If Phase II is completed through build-out by December 31, 2019, the Vesting Period shall be extended through December 31, 2022, on condition that Property Owner applies to Town by December 31, 2019, and receives from Town, in writing, a letter authorized by Town Council concurring that Phase II has been completed through build-out by December 31, 2019.

(3) If Phase III is completed through build-out by December 31, 2022, the Vesting Period shall be extended through December 31, 2025, on condition that Property Owner applies to Town by December 31, 2022, and receives from Town, in writing, a letter authorized by Town Council concurring that Phase III has been completed through build-out by December 31, 2022.

(4) If Phase IV is completed through build-out by December 31, 2025, the Vesting Period shall be extended through December 31, 2028, on condition that Property Owner applies to Town by December 31, 2025, and receives from Town, in writing, a letter authorized by Town Council concurring that Phase IV has been completed through build-out by December 31, 2025.

For purposes of extended vested rights, the term “completed through build-out” shall mean, as respects a Phase of the Property, that (i) all public improvements required by Town for such Phase (per Town Code or agreement between Parties) have been constructed by Property Owner and that Initial Acceptance and provision to Town of Warranty Security has occurred pursuant to the Subdivision Improvement Agreement, (ii) that the Water District and the Sewer District have finally accepted the water and wastewater improvements and evidence thereof has been provided to Town, and (iii) that all obligations of Property Owner in the Amended and Restated Subdivision Improvement Agreement and this Agreement as the same may affect Property within such Phase have been performed to the satisfaction of Town in its sole reasonable discretion.

c. Compliance with Agreement and Final Plat. Pursuant to the contractual commitments made herein, Property Owner shall have vested property rights to undertake and complete the development and use of the Property under the terms and conditions of this Agreement, the Subdivision Improvement Agreement, and the Final Plat.

d. Final Plat. The Final Plat shall be considered a site specific development plan as defined by Colorado law and the Timnath Municipal Code for the conditional Vesting Period identified above for the Property and conditional extended vesting periods for Phases II through V of the Property.
e. **Limitation on Vested Rights.** Notwithstanding anything in this Section to the contrary, in no event shall the vested rights granted herein prevent Town, by its citizens through initiative or referendum or by Town Council, from acting as reasonably necessary to protect property, businesses or residents within the Town from natural or man-made hazards, which hazards if uncorrected would pose a serious threat to the public health, safety and welfare of residents, businesses or properties within Town.

f. **Infrastructure Standards.** Parties acknowledge and agree that Town Code and Town’s then-existing design and construction standards shall be applicable to all future construction of items historically considered to be public in nature, including generally, water lines, sewer lines, streets, drainage improvements, park improvements, traffic safety and control devices, etc. common to similar developments in Town. Accordingly, the vested rights previously granted and extended herein shall not include design and construction standards for public improvements.

12. **Town Ordinances, Regulations, Codes, Policies, and Procedures.** To the extent consistent with vested property rights granted above, the provisions of this Agreement, and the Final Plat, the Parties agree that all current and future Town ordinances, regulations, codes, policies and procedures (collectively, “**Regulations**”) shall be applicable to the use and development of the Property. If such Regulations are inconsistent with the vested property rights granted herein, such inconsistent Regulations shall apply to development of the Property only if, in Town’s sole reasonable discretion, such Regulations are necessary to preserve the public’s health, safety and welfare. If the Property is replatted in any manner, all Regulations in effect at the time of replat shall be applicable to the use and development of the Property or portion of the Property that is subject to the replat.

13. **Breach by Property Owner - Town's Remedies.** In the event of a breach of any of the terms and conditions of this Agreement by Property Owner, and until such breach is corrected, the Town may take such actions as are permitted and/or authorized by the ordinances of the Town, this Agreement, and/or other law as the Town reasonably deems necessary in order to protect the public health, safety and welfare; to protect lot buyers and builders; and to protect the citizens of Town from undue hardship and undue risk. These remedies include, but are not limited to:

   a. The refusal to issue any building permit;

   b. The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party;

   c. Refusal to accept further land use applications for the Property;

   d. Disconnection of the Property from Town;
e. Specific performance of this Agreement;
f. Denial or revocation of any utility tap connection;
g. Placement of a lien on the Property to be collected with the property taxes;
h. Any other remedy available at law or equity.

Unless necessary to protect the immediate health, safety and welfare of Town or to protect Town's interest with regard to security given for the completion of the public improvements, Town shall provide Property Owner thirty (30) days prior written notice of its intent to take any action under this paragraph, specifying the claimed breach or default of such person or entity. If during such thirty (30) day period Property Owner commences to cure the breach described in the notice and proceeds reasonably thereafter to cure the breach, any action taken by Town to enforce this Agreement shall be discontinued and no further action shall be taken by Town to the extent that the Property diligently pursues the cure to completion.

14. Breach by Town: Property Owner’s Remedies. Property Owner shall have any and all remedies against Town for breach of this Agreement available at law or in equity for a material breach of this Agreement by Town, including the right to seek statutory disconnection for a material breach which substantially impairs Property Owner’s ability to develop the Property.

15. Attorney’s Fees. In the event of any litigation to enforce or construe the terms of this Agreement, the substantially prevailing party shall be entitled to payment of its costs of litigation, including attorney fees, by the other party.

16. Acknowledgement. It is expressly understood that Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with Town Code and the laws of the State of Colorado. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances, or as a waiver or abrogation of Town's legislative, governmental, or police powers to promote and protect the health, safety and general welfare of Town or its inhabitants; nor shall this Agreement prohibit the enactment by Town of any fee that is of uniform or general application.

17. Notice. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by facsimile, or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of Parties herein set forth. All notices so given shall be considered effective on the date of delivery, or facsimile if sent during normal business hours, 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
18. **Assignment.** Property Owner shall have the right to assign or transfer all or any of its interests, rights, or obligations under this Agreement to any person or entity that is an “affiliate” of Property Owner without the consent of Town. Property Owner shall also have the right to assign or transfer all or any of its interests, rights, or obligations under this Agreement to any other person or entity having the legal authority and financial ability to perform the obligations being assigned to such person or entity after at least thirty (30) days prior written notice to Town. Upon such notice and written assumption of the obligations of Property Owner by an assignee, the assignor shall be relieved of any further obligations or liability with respect to the performance of any of the duties or obligations of Property Owner arising after the date such duties and obligations are assumed by the Assignee. The term “affiliate” as used hereinabove, shall mean and refer to any person or entity, directly or indirectly, controlling, controlled by, or under common control with Property Owner. The terms “controlling,” “controlled by,” or “under common control with,” shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity whether through the ownership of voting securities or otherwise.

19. **Title and Authority.** Property Owner warrants and represents to Town that it is the record owner of the Property, except for county roads shown on the annexation map. Each person signing this Agreement on behalf of an entity represents and warrants that he or she has full power and authority to enter into this Agreement on behalf of the entity. Property Owner and the undersigned individuals understand that the Town is relying on such representations and warranties in entering into this Agreement.

20. **Entire Agreement - Amendments.** This Agreement embodies the whole agreement of the Parties with respect to the annexation of the Property to the Town and development of the Property within the Town. There are no promises, terms, conditions, or obligations other than those contained herein, which shall supersede all previous communications, representations or
agreements, either verbal or written, between the Parties hereto. This Agreement may be amended only by written agreement between the Property Owner and the Town. In the event that the Property is subdivided and lots are sold to different individuals in the future, this Agreement may be amended by agreement between the Property Owner and the Town, without consent of such lot owners to the extent such amendment does not adversely affect such other lot owners in a material manner.

21. **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.

22. **Effective Date-Termination.** This Agreement shall be effective and binding upon but Parties but shall not affect the effective date of the ordinance annexing the Property to Town. This Agreement shall be terminated and considered null and void on the date of disconnection if the Property is subsequently disconnected from Town.

23. **Further Assurances.** The parties shall execute such additional documents and take such additional action as may be necessary to effectuate the intent of this Agreement.

24. **No Duress.** Parties agree that this Agreement is freely and voluntarily executed by them after extensive negotiations between them and an opportunity for each party to obtain legal advice.

25. **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.

26. **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.

27. **Time is of the Essence.** Time is of the essence for both parties with respect to the obligations herein. The Parties agree that they will each act in as expeditious a manner as is reasonably possible in performing the obligations herein.

28. **Third Party Beneficiaries.** This Agreement is made by and between Parties and their successors and, to the extent permitted, assigns and solely for their benefit. No third parties, including but not limited to adjacent property owners and/or individual lot owners or buyers, shall be entitled to enforce the duties or enjoy the rights created herein.

29. **Integration.** It is expressly understood that Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with
documents approved by the Board of Trustees at a public meeting, the Town Code, and the laws of the State of Colorado.

30. **Captions.** The captions to this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

31. **Approvals.** Whenever approval or acceptance of Town is necessary pursuant to any provisions of this Agreement, Town shall act reasonably and in a timely manner in responding to such request for approval or acceptance.
IN WITNESS WHEREOF, this Agreement has been executed by Parties, intending to be legally bound hereby, as of the date set forth above.

TOWN: TOWN OF TIMNATH, COLORADO, A Municipal Corporation

ATTEST: Jill Grossman-Belisle, Mayor
Milissa Peters, Town Clerk

PROPERTY OWNER: Brunner Farm Holdings, LLC
By: Dino DiTullio, Manager

STATE OF COLORADO )
COUNTY OF LARIMER ) ss.

The foregoing instrument was acknowledged before me this ___ day of __________, 2014, by ______________________________.

WITNESS my hand and official seal.

________________________________
Notary Public
My Commission expires: __________
EXHIBIT A
(Property Description)
Exhibit A

LEGAL DESCRIPTION:

A tract of land located in Section 11, Township 6 North, Range 68 West of the 6th Principal Meridian, Town of Timnath, County of Larimer, State of Colorado and being more particularly described as follows:

Considering the North line of the Northeast Quarter of said Section 11 as bearing North 88°35'19" East with all other bearings herein relative thereto:

COMMENCING at the North Quarter Corner of Section 11; thence along the West line of the Northeast Quarter of Section 11, South 00° 58' 24" West, 30.03 feet to the Point of Beginning, said point being on the South right-of-way line of County Road 36; thence along said South line, North 88° 35' 19" East, 2511.45 feet to the West right-of-way line of County Road 3; thence along said West line, South 00° 34' 57" East, 2495.14 feet; thence, North 77° 19' 47" West, 1304.81 feet to a point on the West line of the Southeast Quarter of the Northeast Quarter; thence along said West line, North 00° 11' 36" East, 692.14 feet; thence, North 23° 51' 18" West, 213.43 feet to a point on the South line of the Northwest Quarter of the Northeast Quarter; thence along said South line, South 88° 48' 49" West, 1201.12 feet to the Center North Sixteenth Corner of Section 11; thence along the West line of the Northeast Quarter of Section 11, North 00° 58' 24" East, 1284.68 feet to the Point of Beginning.

The above described tract of land contains 4,589,386 square feet or 105.358 acres more or less and is subject to all easements and right-of-way now on record or existing.
EXHIBIT B
(Annexation Map)
EXHIBIT C  
(Phasing Plan)

INTENTIONALLY OMITTED
Brunner Farm Annexation Impact Report
(AX-2013-001)

December 18, 2013
REVISED January 2, 2014

Annexation Impact Report Requirements

Pursuant to C.R.S. Section 31-12-108.5, this document fulfills the Annexation Impact Report requirements for annexations in excess of 10 acres. The Town of Timnath has prepared the following report to satisfy said requirements and it contains the following items:

1. A map of the municipality and adjacent territory to show the following:
   a. The present and proposed boundaries of the municipality in the vicinity of the proposed annexation;
   b. The present streets, major trunk water mains, sewer interceptors and outfalls, other utility lines and ditches, and the proposed extension of such streets and utility lines in the vicinity of the proposed annexation; and
   c. The existing and proposed land use pattern in the areas to be annexed.
2. A copy of any draft or final preannexation agreement, if available;
3. A statement setting forth the plans of the municipality for extending to or otherwise providing for, within the area to be annexed, municipal services performed by or on behalf of the municipality at the time of annexation;
4. A statement setting forth the method under which the municipality plans to finance the extension of the municipal services into the area to be annexed;
5. A statement identifying existing districts within the area to be annexed; and
6. A statement on the effect of annexation upon local-public school district systems, including the estimated number of students generated and the capital construction required to educate such students.

Project Summary

The Brunner Farm Annexation is intended to be subdivided into 202 single family lots with a variety of lot sizes ranging from 7,000 square feet to lots that will be 1/3 – acre in size. Overall gross density is 1.99 dwelling units per acre. The 108.4-acre site is located south of County Road 36 and west of Three Bell Parkway (see attached annexation map). The east side of the property is contiguous to existing Town of Timnath right-of-way along Three Bell Parkway. The Timnath South Subdivision is directly east of the site. In addition, the proposed annexation is located within the Town of Timnath Growth Management Area (GMA) Boundary.

Assessment of Community Need

Timnath, Colorado is a growing community. The Brunner Farm Annexation will ultimately create a desirable product for future homeowners who want to move to the area and build on a larger than average lot and take advantage of the unobstructed views that this property offers. The community will encourage the use of pedestrian and bicycling by utilizing the local street, sidewalk and trail networks. The property is within walking distance to Bethke Elementary and future planned employment and commercial adjacent to Harmony Road.
The development is compatible with the Town Timnath Comprehensive Plan adopted April 23, 2013 and is a desirable addition to the Town. Specifically, the following goals, objectives and action items as outlined in the Town’s Comprehensive Plan, are being achieved by this annexation:

1. Develop land within Timnath by targeting non-residential development and allowing housing to develop based on market demand and the ability of the Town to provide services.
2. New development, redevelopment, and infrastructure investment should strive to promote healthy communities and active lifestyles by providing or encouraging enhanced bicycle and pedestrian circulation, access, and safety along roads near areas of employment, schools, and parks.
3. Target pedestrian and cycling infrastructure investments in areas near employment centers, schools, public parks and trails and as outlined in the PROST plan.
4. Ensure that zoning changes conform to the Comprehensive Plan.
5. Incorporate a plan consistency requirement into the zoning code.
6. Where feasible, annex lands adjacent to existing development prior to annexing other undeveloped areas to the town.
7. Enhance the quality of community amenities as a means of ensuring Timnath’s attractiveness to future employers.
8. Create a schedule for ongoing improvements to Timnath’s pathway system, including acquisition of rights-of-way for future development, agreements with private developers for path and trail construction, and other approaches.
9. Continue to pursue pathway and trail development and extensions throughout the GMA.
10. Develop a well-balanced transportation system that supports automobile, pedestrian and bicycle movement.
11. Provide on- and off-street bicycle lanes as well as sidewalks along urban streets throughout the community.
12. Require sidewalks on all streets in development approvals. All street reconstruction should include sidewalks.
13. Consider alternative transportation projects when prioritizing future parks, open space, and trails for the Parks, Recreation, Open Space and Trails Plan.
14. Develop a safe and efficient transportation system utilizing complete street concepts where feasible.
15. Design street cross-sections to include easily identifiable spaces for all users: drivers, pedestrians, and bicyclists, as appropriate.
16. Provide frequent street crossings in developed areas with easily accessible pedestrian signals at intersections.
17. Develop an off-road pedestrian, bicycle and equestrian trail system that connects open spaces and recreation areas in and around Timnath as adopted in the Parks Recreation Open Space and Trails Plan.
18. Refer to the trails adopted in the Parks Recreation Open Space and Trails Plan during development review and require new trails be constructed or the right-of-way for new trails be provided as new developments are approved.
19. Provide an adequate level of public facilities, infrastructure and services for the residents of Timnath.
20. Require adequate infrastructure concurrent with development.
21. Review and monitor agreements with utility providers to ensure infrastructure will be planned and installed consistent with the Comprehensive Plan in a timely, efficient and cost effective manner.
22. Require new developments to connect to existing water and sewer systems and prohibit the proliferation of small private water and sewer systems.
23. Require developers to pay for 100% of the cost of providing infrastructure to support new developments, except when the development is part of a public private partnership in which case the costs may be shared.
24. Coordinate with special districts and authorities that provide community services to ensure an appropriate level of service is maintained as the Town grows.
25. The Town will build upon its natural assets in providing a connected, balanced system of parks, trails, open space and recreation facilities that is equitably distributed and accessible to all residents.
26. Provide 2.5 acres of neighborhood parkland and 5.5 acres of community parkland for every 1,000 residents.
27. Develop requirements for parkland dedication in land or payment in lieu of land for all subdivision development.
28. Rely on private development to provide pocket parks within 0.25 mile of every resident in new subdivisions, and to meet a level of service of .5 acres per 1,000 population.
29. Locate neighborhood parks within 0.5 mile of the neighbors they are intended to serve, and in locations that are comfortably and safely accessible by pedestrians and bicyclists.
30. Design parks to provide for a variety of experiences that appeal to a broad range of interests, abilities and ages.
31. Provide accessible facilities and rehabilitate existing facilities to meet the requirements of the Americans with Disabilities Act (ADA).
32. Provide safe, enjoyable and comprehensive bicycle and pedestrian connections throughout Timnath.
33. Provide a multi-purpose community-wide core trail system that connects major destinations (e.g., neighborhood and community parks, regional trail systems, open space areas, recreation centers, schools, downtown, major event centers, etc.) and provides opportunities for trail loops with areas of interest along the route.
34. Connect neighborhood parks and neighborhood schools to a community-wide trail system with neighborhood connector (local) trails that are provided for and maintained by private development (where feasible and appropriate in the context of the neighborhood design).
35. Provide pedestrian and bicycle access (bike lanes and routes as appropriate for the road classification) throughout neighborhoods to facilitate safe, enjoyable routes between homes, parks and recreational amenities.
36. Ensure that new residential development contributes its fair share for parks and recreational facilities to the extent allowed by state law and Town code.
37. Town expansion and growth will recognize and design with the natural amenities within the community including wildlife, habitat, waterways and groundwater.

Summary of services extended to potential development by the Town of Timnath
Transportation System

Transportation improvements will include improvements to Three Bell Parkway and County Road 36 (River Pass Road). The Town of Timnath will maintain the areas within all public right-of-ways between back of curb to back of curb. The adjacent land owner or metropolitan district will be responsible for maintenance of the sidewalk, parkway, and irrigation within all public right-of-ways behind the back of curb.

Additional traffic impacts of the Brunner Farm Annexation will be minimal to the existing surrounding transportation system infrastructure. The primary concern is with the increased demand to Three Bell Parkway and Harmony Road. This intersection has recently been upgraded with a traffic signal to increase the level of service. Three Bell Parkway has been improved to near ultimate conditions as well as all local streets within Timnath South First and Second Filings. The intersection of Three Bell Parkway and Summerfields Parkway provides one access point to Timnath South Third Filing and the Brunner Annexation. There is another opportunity for an access point mid-way on Three Bell Parkway. A third access is off of County Road 36. A traffic study will determine what improvements, if any, need to be made to the surrounding roads.
Law Enforcement Impact

Initially, law enforcement will experience an increase in thefts and suspicious incidents within the construction area and complaints from the closest neighborhoods concerning the construction zone. We will work with the builders and make recommendations concerning how to secure the work sites and buildings. As the homes are occupied and the neighborhood matures an increase in residential alarms, accidents, and traffic and neighborhood complaints will occur.

An additional officer is being added in late 2014. As build out occurs there will be the need for another officer to assist with commercial and residential case reporting and investigations.

Financing methods for municipal services provided by the Town of Timnath

Municipal services provided directly by the Town will be funded in part by income generated from property and sales taxes as well as development impact fees and building permit fees. Portions of the property taxes generated will be distributed to the appropriate taxing entities within the Town per mil levee distribution amounts.

Summary of services provided on behalf of the Town of Timnath

School Impact

The Poudre School District provides education for the Timnath youth. Currently Poudre School District has two elementary schools within the Town limits, Bethke Elementary and Timnath Elementary. They currently hold property within or adjacent to the Town limits for a future middle school and high school. They are in the process of updating a regional planning study. They have been in contact with the Town and the Town has provided anticipated development potential including immediate and mid range projections including the Brunner Farm Annexation. The Town hasn’t been informed of any objections to the addition of this development and the added pressure to the current school district facilities.

Water and Sewer Service

Sanitary Service: The Brunner Farm Annexation will petition for inclusion in the South Fort Collins Sanitation District. The property can be served physically by existing infrastructure in Timnath South and/or the future sewer main being installed at or near the intersection of Three Bell Parkway and County Road 36 (River Pass Road) located at the northeast corner of the property.

Water Service: This property is currently included in the Fort Collins-Loveland Water District and will be served with potable water by said district. Mains within County Road 36 (River Pass Road) on the north side and within Three Bell Parkway on the east side will be improved as needed for development of this property.

Non-potable Water Service: This property has access to non-potable water by way of the Akin Lateral if said use is desired with development.

Storm Drainage Impacts

This property historically drains from the center of the property to either the east or west. The eastern half of the property will be routed through existing infrastructure in Timnath South and will ultimately outfall to the Greeley No. 2 Ditch at or below the 10-year historic runoff rate in the 100-year storm event, per the
ditch requirements. The west half of the property will discharge to the Poudre River or to existing drainage ways connected to the Poudre River and within the floodplain.

To mitigate negative effects of stormwater discharge from this property, water quality ponds or structure will be implemented per Town standards. The western half of this property will discharge un-detained to the Poudre River or channels directly connected to the River so long as downstream properties are not negatively affected by said actions. Where necessary, peak runoff rates to the Poudre River will be designed not to exceed historic rates for any given design storm, or may require additional detention as will be determined during design of the system. The eastern half of the property will be detained to attenuate stormwater runoff. All stormwater facilities utilized to mitigate negative stormwater effects for the development of this property will be in either onsite or those owned and maintained by parties with interest in the project.

No regional stormwater facilities are known to be affected by the proposed development of the property. There is floodplain/floodway located along the western property boundary but 20’ or more below where development generally would be planned. Any floodplain development will follow all legal regulations and requirements.

The property is the final discharge point of the Akin Lateral. This irrigation ditch will be evaluated for use within the proposed development. If no longer needed the irrigation lateral will be terminated prior to the property. No irrigation tailwater is known to discharge across the property.

**Telephone, Electric, Gas, and Cable Utility Impacts**

These utility services will be provided by Xcel Energy, Century Link, and Comcast. Each of these providers currently provide service to the adjacent development and have infrastructure suitable to serve the Brunner Farm Annexation.

**Fire District Impact**

Poudre Fire Authority currently provides fire district services to the annexed portions of Timnath. The Brunner Farm Annexation will be required to petition *for inclusion to the Poudre Valley Fire Protection District and exclusion* from the Windsor-Severance Fire Protection District.

Currently the Town is working with PFA to develop a fire station that will better serve the residents of Timnath. The fire station be located north of this development off of Harmony Road. The district has been working with the Town and reviewing the Town’s projected growth patterns and anticipated this development and the increased density in population.

**Environmental Impacts of the Proposed Development**

The property abuts and contains a portion of the floodplain for the Poudre River along the west property line. The portion of the property containing the floodplain is proposed to be undisturbed and platted as a non-buildable outlot. This future outlot does contain jurisdictional wetlands that will remain undisturbed. The remainder of the site is farmed agricultural fields with limited natural vegetation. There are no anticipated direct adverse impacts on local wildlife or environmental resources in these areas. The indirect impact to wildlife or environmental resources are unknown at this time.
Economic Development Potential

Changing property from an agricultural use to a residential use will have a direct increase in property tax revenues to the County and to the Town as well as any other taxing districts within the Town.

Existing and Adjacent Land Uses

North – Unincorporated Larimer County and zoned FA-1.

West – Unincorporated Larimer County and zoned FA-1.

South – Unincorporated Larimer County and zoned FA-1.

East – All adjacent land to the east is within the Town of Timnath Municipal boundary and is zoned R-2, Single-Family Residential and C-2, Community Commercial.

Attachments:
1. Annexation Map
2. Draft Annexation Agreement
3. Annexation Petition
PETITION FOR ANNEXATION

PETITION FOR ANNEXATION TO THE TOWN OF TIMNATH, COLORADO

THE UNDERSIGNED, being “landowners” as defined in C.R.S. § 31-12-103(6), hereby Petition the Town of Timnath, Colorado (the “Town”) for annexation for the following described property and further state:

1. The legal description of the land which Landowners request to be annexed to the municipality is attached hereto as Exhibit "A", hereinafter referred to as the "Property."

2. It is desirable and necessary that the Property be annexed to the Town.

3. The following requirements of C.R.S. § 31-12-104 exist or have been met:
   a. Not less than 1/6th of the perimeter of the Property is contiguous with the Town.
   b. A community of interest exists between the Property and the Town. The Property is urban or will be urbanized in the near future; and the Property is capable of being integrated into the Town.

4. None of the limitations provided in C.R.S. § 31-12-105 are applicable and the requirements of that statute have been met because of the following:
   a. The annexation of the Property will not result in the Property being divided into separate parts or parcels under identical ownership;
   b. No land area within the Property held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate comprising 20 acres or more and having a valuation for assessment in excess of $200,000 for ad valorem tax purposes has been included in the area of the Property to be annexed without the written consent of the landowners thereof;
   c. No annexation proceedings have been commenced for annexation of any part of the Property by any other municipality;
   d. The entire width of all streets and alleys to be included within the area annexed are included;
   e. The annexation of the Property will not result in the detachment of area from any school district or the attachment of same to another school district; and
   f. Annexation by the Town of the Property will not have the effect of, and will not result in, the denial of reasonable access to landowners, owners of an
easement, or owners of a franchise adjoining a platted street or alley, inasmuch as annexation of the Property will not result in annexation of a platted street or alley which is not bounded on both sides by the Town.

5. The annexation of the Property will not have the effect of extending a boundary of the Town more than three miles in any direction from any point of the municipal boundary in the past 12 months.

6. The Petitioners comprise the owners in fee of more than 50 percent of the area of the Property, exclusive of public streets and alleys, and comprise more than 50 percent of the landowners of the Property. The legal description of the land owned by each signer of this petition is shown on Exhibit A.

7. The Petitioners request that the Town Council approve the annexation of the Property.

8. This Petition is accompanied by four (4) copies of an annexation boundary map in the form required by C.R.S. § 31-12-102(1)(d) and attached as Exhibit B.

9. The Petitioners reserve the right to withdraw this Petition in the event the Property is not zoned in accordance with the Annexation Agreement, if any.

10. This instrument may be executed in one or more counterparts, all of which taken together shall constitute the same document.
PETITIONERS:

GL Brunner Farms LLC and Timnath Holdings, LLC

By: [Signature]

Mailing Address: 5650 Greenwood Plaza Blvd, Suite 250G
Greenwood Village CO 80111

STATE OF COLORADO

COUNTY OF [Signature] (s.s.)

Subscribed and sworn to before me this [Signature] day of [Signature], 2013, by
[Signature] and as Manager of GL Brunner Farms LLC and Timnath Holdings LLC.
Witness my hand and official seal.

My commission expires: [Signature]

BRANDEE YEAGER
Notary Public
State of Colorado
My Commission Expires December 17, 2014
AFFIDAVIT OF CIRCULATOR IN SUPPORT OF PETITION
[Required for all petitions, including those signed by a single owner]

STATE OF COLORADO  
COUNTY OF Larimer  

) ss.

being first duly sworn states as follows:

a. I have circulated the foregoing Petition for Annexation to the Town of Timnath set forth herein.

b. I know the persons whose names are subscribed to the foregoing Petition on behalf of the Petitioners.

c. The signatures on the foregoing Petition were affixed in my presence and each signature is a true, genuine and correct signature of the person it purports to be.

d. To the best of my knowledge and belief, the persons whose names are affixed to the foregoing Petition are authorized to sign such document on behalf of Petitioners.

CIRCULATOR

________________________

STATE OF COLORADO  
COUNTY OF Larimer  

) ss.

Subscribed and sworn to before me this 13th day of November, 2013, by

Witness my hand and official seal.

My commission expires: 2/22/2014

GUY D. JOHNSON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 2014007029
MY COMMISSION EXPIRES FEBRUARY 22, 2014

Notary Public
EXHIBIT A

LEGAL DESCRIPTION OF
PROPERTY PROPOSED FOR ANNEXATION

BRUNNER FARM ANNEXATION TO TIMNATH

That portion of Section Two (2) and Section Eleven (11), Township Six North (T.6N.) Range Sixty-Eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado and being more particularly described as follows:
Considering the North line of the Northeast Quarter of said Section 11 as bearing North 88°35'28" East with all other bearings herein relative thereto:

BEGINNING at the North Quarter Corner of Section 11; thence along the North line of Northeast Quarter of Section 11, North 88° 35' 28" East, 543.04 feet; thence, North 01° 24' 35" West, 30.00 feet to the North right-of-way line of County Road 36; thence along said North line, North 88° 35' 28" East, 1967.75 feet to the West right-of-way line of County Road 3; thence along said West line, South 00° 51' 03" East, 60.00 feet; thence continuing along said West line, South 00° 34' 57" East, 2495.04 feet; thence, North 77° 19' 47" West, 1304.81 feet to a point on the West line of the Southeast Quarter of the Northeast Quarter; thence along said West line, North 00° 11' 36" East, 692.14 feet; thence, North 23° 51' 18" West, 213.43 feet to a point on the South line of the Northwest Quarter of the Northeast Quarter; thence along said South line, South 88° 48' 49" West, 1201.12 feet to the Center North Sixteenth Corner of Section 11; thence along the West line of the Northeast Quarter of Section 11, North 00° 58' 24" East, 1314.70 feet to the Point of Beginning.

The above described tract of land contains 4,723,611 square feet or 108.439 acres more or less and is subject to all easements and right-of-way now on record or existing.
EXHIBIT B

ANNEXATION BOUNDARY MAP

[Attached]
BRUNNER FARM ANNEXATION MAP
A TRACT OF LAND LOCATED IN SECTION 2 AND SECTION 11, TOWNSHIP 6 NORTH, RANGE 68 WEST
OF THE 6th PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO
EXECUTIVE SUMMARY: A recommendation to Town Council for an ordinance to zone property located to the south of and adjacent to CR 36/River Pass Road, and west of and adjacent to Three Bell Parkway, to R-2 Single-Family Residential (+/- 103.812 acres) and MU Mixed-Use Zoning (+/- 4.630 acres). The applicant is proposing 202 units for a density of approximately 2 DU/per acre, which is consistent with the Town’s Adopted Comprehensive Plan.

STAFF RECOMMENDATION: Staff recommends the approval of this ordinance to zone the aforementioned property.

KEY POINTS/SUPPORTING INFORMATION:
The property is currently zoned FA-1 (Farming) in Larimer County. The proposal is to zone the property after annexation to R-2 Single-Family Residential and MU Mixed-Use Zoning Districts.

Owner: Grant and Gregory Brunner, GL Brunner Farms, LLC and Timnath Holdings, LLC
Applicant: Jim Birdsall, The Birdsall Group

Application Type: Zoning

Case Number: RZ-2013-004

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<td>With property owner, Mayor, and town staff</td>
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<td>Substantial compliance</td>
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<td>Referral comments were due by 09/13/13.</td>
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<td></td>
<td>Notifications posted at Town of Timnath and Post Office</td>
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<td>Notifications in Fort Collins Coloradoan</td>
<td>12/13;12/20;12/27;01/03/14;</td>
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Location: South of and adjacent to CR 36/River Pass Road, and west of and adjacent to Three Bell Parkway

Parcel Size (Acres): Approximately 108.44 acres

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<th>Existing Zoning: FA-1</th>
<th>Proposed Zoning: R-2, Single Family Residential and M-U, Mixed Use</th>
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<td>Existing Land Use: Vacant</td>
<td>Proposed Land Use: Single Family Residential</td>
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SERVICES:
- Water: Fort Collins – Loveland Water District
- Sewer: South Fort Collins Sanitation District
- Fire: Poudre Fire Authority
- Special Districts: None

Adjacent Zoning/Land Uses:

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<tr>
<td>South</td>
<td>Agricultural (FA-1)</td>
<td>Residential/farming</td>
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<tr>
<td>East</td>
<td>C-2 and R-2; Three Bell Parkway</td>
<td>Community Commercial and Residential</td>
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<tr>
<td>West</td>
<td>Agricultural (FA-1)</td>
<td>Residential/farming</td>
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ADVANTAGES:
- The addition of this parcel to the Town of Timnath will be consistent with the existing residential character of the Town of Timnath
- Consistent with the Town of Timnath Comprehensive Plan

DISADVANTAGES:
- Increase in services supplied by Town

FINANCIAL IMPACT:
- Increase in use tax and property taxes

RECOMMENDED MOTION:
- I move to recommend approval of the Brunner Farm zoning application to zone the parcel to R-2, Single-Family Residential and M-U, Mixed Use.

ATTACHMENTS:
1. Ordinance 2, Series 2014
   a. Exhibit A: Legal description of property
2. Zoning Map
TOWN OF TIMNATH, COLORADO
ORDINANCE NO. 2, SERIES 2014

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE TOWN OF TIMNATH FOR THE PURPOSE OF ZONING CERTAIN REAL PROPERTY TO BE KNOWN AS THE BRUNNER FARM ANNEXATION (SOUTH OF AND ADJACENT TO CR 36/RIVER PASS ROAD AND WEST OF AND ADJACENT TO THREE BELL PARKWAY)

WHEREAS, Gregory Brunner, GL Brunner Farms, LLC has submitted a request for zoning of real property within the Town of Timnath more particularly described in Exhibit A and attached hereto and incorporated herein by this reference; and

WHEREAS, the Town Council finds the location of the zoning to be appropriate and in conformance with the Town Comprehensive Plan; and

WHEREAS, the zone change was recommended for approval to R-2 Single-Family Residential and M-U, Mixed Use at a public hearing held by the Town of Timnath Planning Commission on Tuesday, January 07, 2014.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO:

Section 1. Property Zoned

That Article 3 of the Timnath Land Use Codes and the map referred to therein as the "Official Zoning Map of the Town of Timnath", said map being part of said Zoning Code and showing the boundaries of the district specified, shall be and the same is hereby amended in the following particulars, to wit:

R-2, Single Family Residential and M-U, Mixed Use – See attached Exhibit A (legal description) and Exhibit B (zoning map)

Section 2. Public Hearing

The Town Council held a public hearing on Tuesday, February 25, 2014 regarding the zoning of the property.

Section 3. Severability

If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one or parts be declared unconstitutional or invalid.
Section 4. Effective Date

This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter. The Town Clerk shall certify to the passage of this ordinance and make not less than one copy of the adopted Ordinance available for inspection by the public during regular business hours.


MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON FEBRUARY 25, 2014.

TOWN OF TIMNATH, COLORADO

_________________________________
Bryan Voronin, Mayor Pro Tem

ATTEST:

_________________________________
Milissa Peters, Town Clerk
EXHIBIT A

Legal Description of Property Proposed for Zoning

R-2
DESCRIPTION:
BRUNNER FARM R-2 ZONING

PARCEL 1 DESCRIPTION: R-2 SINGLE FAMILY RESIDENTIAL

That portion of Section Two (2) and Section Eleven (11), Township Six North (T.6N.) Range Sixty-Eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado and being more particularly described as follows:

Considering the North line of the Northeast Quarter of said Section 11 as bearing North 88°35'19" East with all other bearings herein relative thereto:

BEGINNING at the North Quarter Corner of Section 11; thence along the North line of the Northeast Quarter of Section 11, North 88° 35' 19" East, 543.04 feet; thence, North 01° 24' 35" West, 30.00 feet to the North right-of-way line of County Road 36; thence along said North line, North 88° 35' 19" East, 1547.75 feet; thence, South 00° 34' 57" East, 480.00 feet; thence, North 88° 35' 19" East, 420.28 feet to the West right-of-way line of County Road 3; thence along said West line, South 00° 34' 57" East, 2075.15 feet; thence, North 77° 19' 47" West, 1304.81 feet to a point on the West line of the Southeast Quarter of the Northeast Quarter; thence along said West line, North 00° 11' 36" East, 692.14 feet; thence, North 23° 51' 18" West, 213.43 feet to a point on the South line of the Northwest Quarter of the Northeast Quarter; thence along said South line, South 88° 48' 49" West, 1201.12 feet to the Center North Sixteenth Corner of Section 11; thence along the West line of the Northeast Quarter of Section 11, North 00° 58' 24" East, 1314.70 feet to the Point of Beginning.

The above described tract of land contains 4,522,037 square feet or 103.812 acres more or less and is subject to all easements and right-of-way now on record or existing.

BRUNNER FARM M-U ZONING

PARCEL 2 DESCRIPTION: MU - MIXED USE

That portion of Section Two (2) and Section Eleven (11), Township Six North (T.6N.) Range Sixty-Eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado and being more particularly described as follows:

Considering the North line of the Northeast Quarter of said Section 11 as bearing North 88°35'19" East with all other bearings herein relative thereto:

Commencing at the North Quarter Corner of Section 11; thence along the North line of the Northeast Quarter of Section 11, North 88° 35' 19" East, 543.04 feet; thence, North 01° 24' 35" West, 30.00 feet to the North right-of-way line of County Road 36; thence along said North line, North 88° 35' 19" East, 1547.75 feet to the POINT OF BEGINNING; thence continuing along said North right-of-way line of County Road 36, North 88° 35' 19" East, 420.00 feet to the West right-of-way line of County Road 3; thence along said West line, South 00° 51' 06" East, 60.00 feet; thence continuing along said West line, South 00° 34' 57" East, 419.99 feet; thence, South 88° 35' 19" West, 420.28 feet; thence, North 00° 34' 57" West, 480.00 feet to the Point of Beginning.

The above described tract of land contains 201,706 square feet or 4.630 acres more or less and is subject to all easements and right-of-way now on record or existing.
**EXECUTIVE SUMMARY:** Legal counsel has prepared the attached ordinance to clarify further property conveyances that may have been approved by actions other than an ordinance as required by Town Charter.

**STAFF RECOMMENDATION:** Staff recommends approval of this ordinance.

**KEY POINTS/SUPPORTING INFORMATION:** The attached ordinance ratifies property conveyances previously approved by resolution or motion.

**ADVANTAGES:** Clarifies and ratifies previous Town Council actions with an appropriate ordinance.

**DISADVANTAGES:** None.

**FINANCIAL IMPACT:** None


**ATTACHMENTS:** Ordinance No 3, Series 2014.
TOWN OF TIMNATH, COLORADO
ORDINANCE NO. 3, SERIES 2013

AN ORDINANCE RATIFYING CONVEYANCES OF REAL PROPERTY INTERESTS BY RESOLUTION

WHEREAS, The Town of Timnath (the "Town") is a home rule municipality operating under the Timnath Home Rule Charter (the “Charter”) adopted on November 7, 2006 and the Town’s Municipal Code (the “Code”). Pursuant to the Charter, the Code, and the authority given home rule municipalities under the Colorado Constitution, the Town may adopt and amend ordinances; and

WHEREAS, pursuant to Section 15.4 of the Charter, subject to certain limitations, the Town Council shall approve the purchase, sale, exchange or disposition of any interest in real property by ordinance; and

WHEREAS, the Town Council has been advised of certain prior conveyances of real property interests that were inadvertently approved by resolution, motion, or otherwise; and

WHEREAS, The Town’s staff and consultants have performed a thorough search in an effort to identify as many of such conveyances as is practicable; and

WHEREAS, the Town Council desires to ratify all real property interest conveyances heretofore approved by resolution, motion, or otherwise that have been identified by the Town staff and consultants, together with the conveyances, if any, approved in this manner that have not yet been identified.

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

Section 1. The Town Council hereby finds, determines and declares that the conveyances of real property interests pursuant to resolution, motion, or otherwise, as set forth and described in Exhibit A, attached hereto and incorporated by reference, together with all other conveyances heretofore approved by resolution, motion, or otherwise, are ratified and approved as of the dates of the subject conveyances;

Section 2. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution, the powers contained in the home rule charter for the Town (“Charter”) and the Timnath Municipal Code (the “Code”);

Section 3. Effective Date. This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter.

MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON FEBRUARY 11, 2014.

TOWN OF TIMNATH, COLORADO

___________________________________
Bryan Voronin, Mayor Pro Tem

ATTEST:

___________________________________
Milissa Peters, Town Clerk
EXHIBIT A

LIST OF CONVEYANCES OF REAL PROPERTY ADOPTED
BY RESOLUTION, MOTION, OR OTHERWISE

RESOLUTION NO. AY-2006 – A RESOLUTION FOR THE BOARD OF TRUSTEES OF
THE TOWN OF TIMNATH APPROVING THE AGREEMENT GRANTING THE TOWN OF
TIMNATH A PERPETUAL EASEMENT FOR THE USE AND MAINTENANCE OF
RECREATIONAL TRAIL UP ON THE PROPERTIES OF THE NEW CACHE LA Poudre
IRRIGATING COMPANY AND THE CACHE LA Poudre RESERVOIR COMPANY,
DATED OCTOBER 4TH, 2006

RESOLUTION NO. T-2007 – A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN
OF TIMNATH AUTHORIZING THE TOWN TO ENTER INTO THAT AGREEMENT
KNOWN AS THE “HARMONY ROAD RIGHT OF WAY EXCHANGE AGREEMENT”,

RESOLUTION NO. U-2007 – A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN
OF TIMNATH AUTHORIZING THE TOWN TO ENTER INTO THAT AGREEMENT
KNOWN AS THE “RELOCATION AND EXCHANGE AGREEMENT”, DATED MAY 16TH,
2007.

RESOLUTION NO. V-2007 – A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN
OF TIMNATH AUTHORIZING THE TOWN TO ENTER INTO THAT AGREEMENT
KNOWN AS THE “CONNELL RIGHT OF WAY AGREEMENT”, DATED MAY 16TH,
2007.

RESOLUTION NO. W-2007 – A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN
OF TIMNATH AUTHORIZING THE TOWN TO ENTER INTO THAT AGREEMENT
KNOWN AS THE “CWH RIGHT OF WAY AGREEMENT”, DATED MAY 16TH,
2007.

RESOLUTION NO. X-2007 – A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN
OF TIMNATH AUTHORIZING THE TOWN TO ENTER INTO THAT AGREEMENT
KNOWN AS THE “RIGHT OF WAY AND ART PURCHASE AGREEMENT” WITH


**TIMNATH COUNCIL COMMUNICATION**

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<th>Item: An Ordinance Approving a Franchise Agreement Between the Town of Timnath and Public Service Company of Colorado</th>
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<td>April D. Getchius, AICP</td>
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**EXECUTIVE SUMMARY:** The attached ordinance approves a franchise agreement with Public Service Company of Colorado (Xcel Energy) governing the use of Town right of ways, paying of franchise fee and other terms and conditions.

**STAFF RECOMMENDATION:** Staff recommends Town Council approve the ordinance.

**KEY POINTS/SUPPORTING INFORMATION:**
- The agreement requires the payment of 3%.
- The term of the agreement if for 20 years.
- The agreement authorizes the Public Service Company to use the Town’s right of ways for their utility installation and governs the terms of undergrounding lines when necessary.

**ADVANTAGES:** The agreement will clarify the terms under which the Public Service Company may install and operate lines within the town right of way. It will also generate income from the franchise fee over the long term.

**DISADVANTAGES:** None.

**FINANCIAL IMPACT:** The Town will continue to receive a 3% franchise fee from utility bills within the town of Timnath. Our total franchise fee revenues are approximately $66,000 per year but are expected to grow with our continued development.

**RECOMMENDED MOTION:** I move approval of Ordinance No 4, Series 2014 entitled “An Ordinance Approving a Franchise Agreement Between the Town of Timnath, Colorado and Public Service Company of Colorado.”

**ATTACHMENTS:**
1. Ordinance
2. Franchise Agreement
TOWN OF TIMNATH
ORDINANCE NO. 4, SERIES 2014

AN ORDINANCE APPROVING A FRANCHISE AGREEMENT BETWEEN THE TOWN OF TIMNATH, COLORADO AND PUBLIC SERVICE COMPANY OF COLORADO

WHEREAS, The Town of Timnath (the "Town") is a home rule municipality operating under the Timnath Home Rule Charter (the “Charter”) adopted on November 7, 2006 and the Town’s Municipal Code (the “Code”). Pursuant to the Charter, the Code, and the authority given home rule municipalities under the Colorado Constitution, the Town may adopt and amend ordinances; and

WHEREAS, pursuant to Section 12.1 of the Charter, franchise agreements shall be approved by the Town Council by ordinance; and

WHEREAS, the Town Council previously approved a franchise agreement with the Public Service Company of Colorado on September 8, 1988; and

WHEREAS, the Town and the Public Service Company of Colorado have reached new agreement for the payment of franchise fees, use of public right of ways and property and additional terms and conditions; and

WHEREAS, the Town Council finds it is in the public’s best interest to renew and establish a franchise agreement with the Public Service Company subject to the terms and conditions attached.

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

Section 1. The Town Council hereby approves the Franchise Agreement between the Town of Timnath, Colorado and Public Service Company of Colorado.

Section 2. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution, the powers contained in the home rule charter for the Town (“Charter”) and the Timnath Municipal Code (the “Code”);

Section 3. Effective Date. This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter. The Town Clerk shall certify to the passage of this ordinance and make not less than one copy of the Ordinance available for inspection by the public during regular business hours.
INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING ON FEBRUARY 25, 2014, AND SET FOR PUBLIC HEARING AND SECOND READING AT 6:00 P.M. ON MARCH 11, 2014 AT THE TIMNATH ADMINISTRATION BUILDING, 4800 GOODMAN STREET, TIMNATH COLORADO, AND ORDERED PUBLISHED BY TITLE THIS 25TH DAY OF FEBRUARY.

MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON MARCH 11, 2014.

TOWN OF TIMNATH, COLORADO

______________________________
Jill Grossman-Belisle, Mayor

ATTEST:

______________________________
Milissa Peters, Town Clerk
FRANCHISE AGREEMENT BETWEEN THE TOWN OF TIMNATH, COLORADO
AND PUBLIC SERVICE COMPANY OF COLORADO

ARTICLE 1  DEFINITIONS
ARTICLE 2  GRANT OF FRANCHISE
ARTICLE 3  TOWN POLICE POWERS
ARTICLE 4  FRANCHISE FEE
ARTICLE 5  ADMINISTRATION OF FRANCHISE
ARTICLE 6  SUPPLY, CONSTRUCTION, AND DESIGN
ARTICLE 7  RELIABILITY
ARTICLE 8  COMPANY PERFORMANCE OBLIGATIONS
ARTICLE 9  BILLING AND PAYMENT
ARTICLE 10  USE OF COMPANY FACILITIES
ARTICLE 11  UNDERGROUNDING OF OVERHEAD FACILITIES
ARTICLE 12  PURCHASE OR CONDEMNATION
ARTICLE 13  MUNICIPALLY PRODUCED UTILITY SERVICE
ARTICLE 14  ENVIRONMENT AND CONSERVATION
ARTICLE 15  TRANSFER OF FRANCHISE
ARTICLE 16  CONTINUATION OF UTILITY SERVICE
ARTICLE 17  INDEMNIFICATION AND IMMUNITY
ARTICLE 18  BREACH
ARTICLE 19  AMENDMENTS
ARTICLE 20  EQUAL OPPORTUNITY
ARTICLE 21  MISCELLANEOUS
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ARTICLE 1
DEFINITIONS

For the purpose of this franchise agreement ("Franchise"), the following words and phrases shall have the meaning given in this Article. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word “shall” is mandatory and “may” is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

§1.1 “Clean Energy” means energy produced from Renewable Energy Resources, eligible energy sources, and by means of advanced technologies that cost-effectively capture and sequester carbon emissions produced as a by-product of power generation. For purposes of this definition, “cost” means all those costs as determined by the PUC.

§1.2 “Company” refers to Public Service Company of Colorado, a Colorado corporation and an Xcel Energy company and its successors and assigns including affiliates or subsidiaries that undertake to perform any of the obligations under this Franchise.

§1.3 “Company Facilities” refer to all facilities of the Company reasonably necessary or desirable to provide gas and electric service into, within and through the Town, including but not limited to plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, street lights, wire, cables and poles and all appurtenances thereto.

§1.4 “Council” or “Town Council” refers to and is the legislative body of the Town.

§1.5 “Distribution Facilities” refers to those lines designed to operate at the utility’s distribution voltages in the area defined in the Company’s tariffs including substation transformers that transform electricity to a distribution voltage and also includes other equipment within a transforming substation which is not integral to the circuitry of the utility’s transmission system. Distribution Facilities shall not include facilities that are exclusively used to provide street lighting service.

§1.6 “Electric Gross Revenues” refers to those amounts of money that the Company receives from the sale or delivery of electricity in the Town, after adjusting for refunds, net write-offs of accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Electric Gross Revenues” shall exclude any revenue for the sale or delivery of electricity to the Town as a customer of the Company.

§1.7 “Energy Conservation” means the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.
§1.8 “Energy Efficiency” means the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.

§1.9 “Force Majeure” means the inability to undertake an obligation of this Franchise due to a cause that could not be reasonably anticipated by a party or is beyond its reasonable control after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, terrorist acts, acts of governmental authority, acts of God, floods, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in the delivery of materials. Neither the Town nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to a Force Majeure condition.

§1.10 “Gross Revenues” refers to those amounts of money that the Company receives from the sale of gas and electricity within the Town under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the Town and those amounts of money, excluding expense reimbursements, which the Company receives from the use of Company Facilities in Streets and Other Public Places (unless otherwise preempted by applicable federal or state law), as adjusted for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Gross Revenues” shall exclude any revenues from the sale of gas or electricity to the Town or the transportation of gas to the Town.

§1.11 “Other Town Property” refers to the surface, the air space above the surface and the area below the surface of any property owned by the Town or directly controlled by the Town due to the Town’s real property interest in the same or hereafter owned by the Town, that would not otherwise fall under the definition of “Streets,” but which provides a suitable location for the placement of Company Facilities as specifically approved in writing by the Town as set forth in Section 2.1 of this Franchise. Other Town Property includes Parks but does not include Public Utility Easements.

§1.12 “Park” refers to any area used as a park, reservation, playground, trail, beach, or any other open area in the Town, owned or used by the Town and devoted or designated to active or passive recreation, either on a temporary or permanent basis.

§1.13 “Private Project” refers to any project which is not covered by the definition of Public Project.

§1.14 “Public Project” refers to (1) any public work or improvement within the Town that is wholly or beneficially owned by the Town; or (2) any public work or improvement within the Town where fifty percent (50%) or more of the funding is provided by any combination of the Town, the federal government, the State of Colorado, any Colorado county, but excluding all entities established under Title 32 of the Colorado Revised Statutes.
§1.15 “Public Utilities Commission” or “PUC” refers to the Public Utilities Commission of the State of Colorado or other state agency succeeding to the regulatory powers of the Public Utilities Commission.

§1.16 “Public Utility Easement” refers to any platted easement over, under, or above public or private property, expressly dedicated to, and accepted by the Town in accordance with applicable law for the use of public utility and other utility-like companies for the placement of utility and/or comparable facilities, including but not limited to Company Facilities.

§1.17 “Relocate,” “Relocation,” or “Relocated” refers to the definition assigned such terms in Section 6.8.A of this Franchise.

§1.18 “Renewable Energy Resources” means wind, solar, geothermal; biomass from nontoxic plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill residue, slash, or brush, or from animal wastes and products of animal wastes, or from methane produced at landfills or as a by-product of the treatment of wastewater residuals; new hydroelectricity with a nameplate rating of ten (10) megawatts or less; and hydroelectricity in existence on January 1, 2005, with a nameplate rating of thirty (30) megawatts or less; fuel cells using hydrogen derived from a Renewable Energy Resource; and recycled energy produced by a generation unit with a nameplate capacity of not more than fifteen (15) megawatts that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel, and includes any eligible renewable energy resource as defined in § 40-2-124(1)(a), C.R.S., as the same shall be amended from time to time.

§1.19 “Residents” refers to all persons, businesses, industries, governmental agencies, including the Town, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the Town.

§1.20 “Streets” or “Town Streets” refers to the surface, the air space above the surface and the area below the surface of any Town-dedicated or Town-maintained streets, alleys, bridges, roads, lanes, access easements, and other public rights-of-way within the Town, which are primarily used for vehicle traffic. Streets shall not include Public Utility Easements and Other Town Property.

§1.21 “Supporting Documentation” refers to all information reasonably required or needed in order to allow the Company to design and construct any work performed under the provisions of this Franchise. Supporting Documentation may include, but is not limited to, construction plans, a description of known environmental issues, the identification of critical right of way or easement issues, the final recorded plat for the property, the date the site will be ready for the Company to begin construction, the date gas service and meter set are needed, and the name and contact information for the Town’s project manager.
§1.22 “Tariffs” refer to those tariffs of the Company on file and in effect with the PUC, the Federal Energy Regulatory Commission or any successor agency, as amended from time-to-time.

§1.23 “Town” refers to the Town of Timnath, a municipal corporation of the State of Colorado.

§1.24 “Transmission Facilities” refers to those lines and related substations designed and operating at voltage levels above the utility’s voltages for Distribution Facilities, including but not limited to related substation facilities such as transformers, capacitor banks, or breakers that are integral to the circuitry of the Company’s transmission system.

§1.25 “Utility Service” refers to the sale of gas or electricity to Residents by the Company under rates and Tariffs approved by the PUC, as well as the delivery of gas to Residents by the Company.

ARTICLE 2
GRANT OF FRANCHISE

§2.1 Grant of Franchise.

A. Grant. The Town hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this Franchise, the non-exclusive right to make reasonable use of Town Streets, Public Utility Easements (as applicable) and Other Town Property:

(1) to provide Utility Service to the Town and to its Residents under the Tariffs; and

(2) to acquire, purchase, construct, install, locate, maintain, operate, upgrade and extend into, within and through the Town all Company Facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transportation and distribution of Utility Service within and through the Town.

B. Street Lighting and Traffic Signal Lighting Service. The rights granted by this Franchise encompass the nonexclusive right to provide street lighting service and traffic signal lighting services, as directed by the Town, and the applicable provisions of this Franchise shall apply with full and equal force to street lighting service and traffic signal lighting service provided by the Company. Wherever reference is made in this franchise to the sale or provision of Utility Service, these references shall be deemed to include the provision of street lighting service and traffic signal lighting service. Conflicting provisions of this Franchise notwithstanding, street lighting service and traffic signal lighting service within the Town shall be governed by the Tariffs.

C. New Company Facilities in Other Town Property, Excluding Parks. For all Other Town Property that is not a Park, the Town’s grant to the Company of the right to locate Company Facilities in, on, over or across such Other Town Property shall be subject to the Company’s already having or first receiving from the Town approval of the
location of such Company Facilities, in the Town’s reasonable discretion; and (2) the terms and conditions of the use of such Other Town Property shall be governed by this Franchise as may be reasonably supplemented to account for the unique nature of such Other Town Property. Nothing in this subsection C. shall modify or extinguish pre-existing Company property rights. Further, this paragraph shall not prohibit the Company from modifying, replacing or upgrading Company Facilities already located in Parks in accordance with the terms and conditions of the Town license agreement, permit or other agreement that granted the Company the right to use such Other Town Property or, if there is no such license agreement, permit or other agreement, in accordance with this Franchise.

D. New Company Facilities in Other Town Property that are Parks. The Town’s grant to the Company of the right to locate Company Facilities in, on, over or across Other Town Property that is a Park shall be subject to (1) the Company’s already having or first receiving from the Town a revocable license, permit or other agreement approving the location of such Company Facilities, which the Town may grant or deny in its sole discretion; and (2) the terms and conditions of such revocable license agreement, permit or other written agreement. Nothing in this subsection D. shall modify or extinguish pre-existing Company property rights. Further, this paragraph shall not prohibit the Company from modifying, replacing or upgrading Company Facilities already located in Park Land in accordance with the terms and conditions of the Town license agreement, permit or other agreement that granted the Company the right to use such Parks or, if there is no such license agreement, permit or other agreement, in accordance with this Franchise.

§2.2 Conditions and Limitations.

A. Scope of Franchise. The grant of this Franchise shall extend to all areas of the Town as it is now or hereafter constituted that are within the Company’s PUC-certificated service territory; however, nothing contained in this Franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service, nor does it affect the Company’s rights and obligations pursuant to any Certificate of Public Convenience and Necessity granted by the PUC.

B. Subject to Town Usage. The right to make reasonable use of Town Streets to provide Utility Service to the Town and its Residents under this Franchise is subject to and subordinate to any Town usage of said Streets.

C. Prior Grants not Revoked. This grant and Franchise does not, and is not intended to revoke any prior license, grant, or right to use the Streets, Other Town Property or Public Utility Easements.

D. Franchise not Exclusive. The rights granted by this Franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the Town reserves the right to make or grant a franchise to any other person, firm, or corporation.
§2.3 Effective Date and Term.

A. Term. This Franchise shall take effect on February 16, 2014, and shall supersede any prior franchise grants to the Company by the Town. This Franchise shall terminate on February 15, 2034, unless extended by mutual consent.

ARTICLE 3
TOWN POLICE POWERS

§3.1 Police Powers. The Company expressly acknowledges the Town’s right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the Town considers making any substantive changes in its local codes or regulations that in the Town’s reasonable opinion will significantly impact the Company’s operations in the Town’s Streets and Public Utility Easements, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company’s non-compliance with any applicable local requirements.

§3.2 Regulation of Streets or Other Town Property. The Company expressly acknowledges the Town’s right to enforce regulations concerning the Company’s access to or use of the Streets, including requirements for permits.

§3.3 Compliance with Laws. The Company shall promptly and fully comply with all laws, regulations, permits and orders lawfully enacted by the Town. Nothing herein provided shall prevent the Company from legally challenging or appealing the enactment of any laws, regulations, permits and orders enacted by the Town.

ARTICLE 4
FRANCHISE FEE

§4.1 Franchise Fee.

A. Fee. In partial consideration for this Franchise, which provides the certain terms related to the Company’s use of Town Streets, Public Utility Easements and Other Town Property, which are valuable public properties acquired and maintained by the Town at great expense to its Residents, and in recognition of the fact that the grant to the Company of this Franchise is a valuable right, the Company shall pay the Town a sum equal to three percent (3%) of all Gross Revenues. To the extent required by law, the Company shall collect this fee from a surcharge upon Town Residents who are customers of the Company.

B. Obligation in Lieu of Fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the Town, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount that the Company would have paid as a franchise fee as partial consideration for use of the Town Streets, Public Utility Easements and Other Town Property. Such
payment shall be made in accordance with the applicable provisions of law. Further, to the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to Town Residents who are customers of the Company.

C. Changes in Utility Service Industries. The Town and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this Franchise, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the Town, the Company will cooperate with and assist the Town in modifying this Franchise in an effort to provide that the Town receives an amount in franchise fees or some other form of compensation that is the same amount of franchise fees paid to the Town as of the date that such initiatives and changes adversely impact franchise fee revenues.

D. Utility Service Provided to the Town. No franchise fee shall be charged to the Town for Utility Service provided directly or indirectly to the Town for its own consumption, including street lighting service and traffic signal lighting service, unless otherwise directed by the Town.

§4.2 Remittance of Franchise Fee.

A. Remittance Schedule. Franchise fee revenues shall be remitted by the Company to the Town as directed by the Town in monthly installments not more than thirty (30) days following the close of each month.

B. Correction of Franchise Fee Payments. In the event that either the Town or the Company discovers that there has been an error in the calculation of the franchise fee payment to the Town, either party shall provide written notice of the error to the other party. Subject to the following sentence, if the party receiving written notice of the error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.2.D of this Franchise; otherwise, the error shall be corrected in the next monthly payment. However, subject to the terms of the Tariff, if the error results in an overpayment of the franchise fee to the Town, and said overpayment is in excess of Five Thousand Dollars ($5,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered, provided that if such period would extend beyond the term of this Franchise, the Company may elect to require the Town to provide it with a refund instead of a credit, with such refund to be spread over the same period the error was undiscovered, even if the refund will be paid after the termination date of this Franchise. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. Subject to the terms of the Tariff, in no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which
C. Audit of Franchise Fee Payments.

(1) Every three (3) years commencing at the end of the third year of this Franchise, the Company shall conduct an internal audit in accordance with generally accepted audit practices for auditing public utilities similar to the Company, to investigate and determine the correctness of the franchise fee paid to the Town. Such audit shall be limited to the previous three (3) calendar years. The Company shall provide a written report to the Town Clerk containing the audit findings.

(2) If the Town disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the Town may conduct its own audit at its own expense in accordance with generally accepted audit practices for auditing public utilities similar to the Company, and the Company shall cooperate, including but not necessarily limited to, providing the Town’s auditor with all information reasonably necessary to complete the audit.

(3) If the results of a Town audit conducted pursuant to subsection C(2) concludes that the Company has underpaid the Town by three percent (3%) or more, in addition to the obligation to pay such amounts to the Town, the Company shall also pay all reasonable costs of the Town’s audit.

D. Fee Disputes. Either party may challenge any written notification of error as provided for in Section 4.2.B of this Franchise by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party’s notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

E. Reports. To the extent allowed by law, upon written request by the Town, but not more than once per year, the Company shall supply the Town with the names and addresses of all registered gas marketers or brokers that utilize Company Facilities to sell or distribute natural gas. The Company shall not be required to disclose any confidential or proprietary information. Additionally, and at the request of the Town no more than once each year, the Company shall provide the Town access to the Company’s 10-K report, which may be provided in electronic format.

§4.3 Franchise Fee Payment not in Lieu of Permit or Other Fees. Payment of the franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the Town, including any fee for a permit lawfully required by the Town, except that the franchise fee provided for herein shall be in lieu of any occupation or similar tax or fee for the use of Town Streets, Public Utilities Easements
and Other Town Property, including but not limited to any rental fee, occupancy fee, occupation fee, or any similar tax or fee.

ARTICLE 5
ADMINISTRATION OF FRANCHISE

§5.1 Town Designee. The Town Manager shall designate in writing to the Company an official having full power and authority to administer this Franchise. The Town Clerk may also designate one or more Town representatives to act as the primary liaison with the Company as to particular matters addressed by this Franchise and shall provide the Company with the name and telephone numbers of said Town representatives. The Town Clerk may change these designations by providing written notice to the Company. The Town’s designee shall have the right, at all reasonable times, to inspect any Company Facilities in Town Streets and Other Town Property.

§5.2 Company Designee. The Company shall designate a representative to act as the primary liaison with the Town and shall provide the Town with the name, address, and telephone number for the Company’s representative under this Franchise. The Company may change its designation by providing written notice to the Town. The Town shall use this liaison to communicate with the Company regarding Utility Service and related service needs for Town facilities.

§5.3 Coordination of Work.

A. The Company agrees to coordinate its activities in Town Streets, Public Utility Easements and Other Town Property with the Town. The Town and the Company will meet annually upon the written request of the Town designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect Town Streets, including but not limited to any planned Town Streets paving project. The Town and Company shall hold such meetings as either deems necessary to exchange additional information with a view toward coordinating their respective activities in those areas where such coordination may prove beneficial and so that the Town will be assured that all applicable provisions of this Franchise, applicable building and zoning codes, and applicable Town air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

B. In addition to the foregoing meetings, the Company agrees to use good faith efforts to provide sufficient notice to the Town whenever the Company initiates plans to significantly upgrade its infrastructure within the Town, including without limitation the replacement of utility poles and overhead lines, in order to allow for Town input and consultation on Company work plans prior to the time that said work plans are finalized so that the beneficial coordination described in A above, may occur.
§6.1 **Purpose.** The Company acknowledges the critical nature of the municipal services performed or provided by the Town to the Residents that require the Company to provide prompt and reliable Utility Service and the performance of related services for Town facilities. The Town and the Company wish to provide for certain terms and conditions under which the Company will provide Utility Service and perform related services for the Town in order to facilitate and enhance the operation of Town facilities. They also wish to provide for other processes and procedures related to the provision of Utility Service to the Town.

§6.2 **Supply.** Subject to the jurisdiction of the PUC, the Company shall take all reasonable and necessary steps to provide a sufficient supply of gas and electricity to Residents at the lowest reasonable cost consistent with reliable supplies.

§6.3 **Charges to the Town for Service to Town Facilities.**

No charges to the Town by the Company for Utility Service (other than gas transportation which shall be subject to negotiated contracts) shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The parties acknowledge the jurisdiction of the PUC over the Company’s regulated intrastate electric and gas rates.

§6.4 **Restoration of Service.**

A. **Notification.** The Company shall provide to the Town daytime and nighttime telephone numbers of a designated Company representative from whom the Town designee may obtain status information from the Company on a twenty-four (24) hour basis concerning interruptions of Utility Service in any part of the Town.

B. **Restoration.** In the event the Company's gas system or electric system within the Town, or any part thereof, is partially or wholly destroyed or incapacitated so as to impact the provision of Utility Service within the Town, the Company shall use due diligence to restore such systems to satisfactory service within the shortest practicable time, or provide a reasonable alternative to such system if the Company elects not to restore such system.

§6.5 **Obligations Regarding Company Facilities.**

A. **Company Facilities.** All Company Facilities within Town Streets and Other Town Property shall be maintained in good repair and condition.

B. **Company Work within the Town.** All work within Town Streets and Other Town Property performed or caused to be performed by the Company shall be done:
(1) in a high-quality manner that is in accordance with general utility practice, applicable laws and the Tariffs;

(2) in a timely and expeditious manner;

(3) in a manner that reasonably minimizes inconvenience to the public;

(4) in a cost-effective manner, which may include the use of qualified contractors; and

(5) in accordance with all required Town permits.

C. No Interference with Town Facilities. Company Facilities shall not unreasonably interfere with any Town facilities, including water facilities, sanitary or storm sewer facilities, communications facilities, or other Town uses of the Streets, Public Utility Easements or Other Town Property. Company Facilities shall be installed and maintained in Town Streets, Public Utility Easements and Other Town Property so as to reasonably minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets, Public Utility Easements and Other Town Property in light of the Company’s obligation under Colorado law to provide safe and reliable utility facilities and services.

D. Permit and Inspection. The installation, renovation, and replacement of any Company Facilities in the Town Streets or Other Town Property by or on behalf of the Company shall be subject to permit, inspection and approval by the Town. Such permitting, inspection and approval may include, but shall not be limited to, the following matters: location of Company Facilities, cutting and pruning of trees and shrubs; and disturbance of pavement, sidewalks and surfaces of Town Streets or Other Town Property; provided, however, Company shall have the right to cut, prune, and/or remove vegetation in accordance with its standard vegetation management requirements and procedures. The Company agrees to cooperate with the Town in conducting inspections and shall promptly perform any remedial action required by the Town pursuant to any such inspection.

E. Compliance. Subject to the provisions of Section 3.3, the Company and all of its contractors shall comply with the requirements of all municipal laws, ordinances, regulations, permits, and standards, including but not limited to requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. The Company shall require that its contractors working in Town Streets, Public Utility Easements or Other Town Property hold the necessary licenses and permits required by law.

F. Increase in Voltage. Unless otherwise provided by law, the Company shall reimburse the Town for the cost of upgrading the electrical system or facility of any Town building or facility that uses Utility Service where such upgrading is caused or occasioned by the Company's decision to increase the voltage of delivered electrical
energy. This provision shall not apply to voltage increases requested by the Town.

G. **As-Built Drawings.** Within thirty (30) days after written request of the Town designee, but no sooner than fourteen (14) days after project completion, the Company shall commence its internal process to permit Company to provide, on a project by project basis, as-built drawings of any Company Facility installed within the Town Streets or contiguous to the Town Streets. If the requested information must be limited or cannot be provided pursuant to regulatory requirements or Company data privacy policies, Company shall promptly notify Town of such restrictions. All confidential or proprietary information shall be handled in accordance with the provisions of §21.5 herein. Town acknowledges that the requested information is confidential information of Company and the Company represents that disclosure to members of the public would be contrary to the public interest. Accordingly, To the extent that the Company marks such information as confidential when delivered to the Town, the information shall be treated as provided in §21.5 herein. As used in this Section, as-built drawings refers to hard copies of the facility drawings as maintained in the Company’s business records and shall not include information maintained in the Company’s geographical information system. The Company shall not be required to create drawings that do not exist at the time of the request.

§6.6 **Excavation and Construction.** The Company shall be responsible for obtaining, paying for, and complying with all applicable permits including, but not limited to, excavation, street closure and street cut permits, in the manner required by the laws, ordinances, and regulations of the Town. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing relocations requested by the Town under Section 6.8 of this Franchise and undergrounding requested by the Town under Article 11 of this Franchise, the Town will not require the Company to pay the fees charged for such permits. Upon the Company submitting a construction design plan, the Town shall promptly and fully advise the Company in writing of all requirements for restoration of Town Streets in advance of Company excavation projects in Town Streets, based upon the design submitted, if the Town’s restoration requirements are not addressed in publicly-available standards.

§6.7 **Restoration.** When the Company does any work in or affecting the Town Streets, Public Utility Easements or Other Town Property, it shall, at its own expense, promptly remove any obstructions placed thereon or therein by the Company and restore such Town Streets, Public Utility Easements or Other Town Property to a condition that is substantially the same as existed before the work, and that meets applicable Town Code and standards. If weather or other conditions do not permit the complete restoration required by this Section, the Company may with the approval of the Town, temporarily restore the affected Town Streets, Public Utility Easements or Other Town Property, provided that such temporary restoration is not at the Town’s expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the Town, the Company shall restore the Streets, Public Utility Easements or Other Town Property to a better condition than existed before the Company work was undertaken, provided that the Town shall be responsible for any
incremental costs of such restoration not required by then-current Town standards, and provided the Town seeks and/or grants, as applicable, any additional required approvals. If the Company fails to promptly restore the Town Streets, Public Utility Easements or Other Town Property as required by this Section, and if, in the reasonable discretion of the Town immediate action is required for the protection of public health, safety or welfare, the Town may restore such Streets, Public Utility Easements or Other Town Property or remove the obstruction therefrom; provided however, Town actions do not interfere with Company Facilities. The Company shall be responsible for the actual cost incurred by the Town to restore such Town Streets, Public Utility Easements or Other Town Property or to remove any obstructions therefrom. In the course of its restoration of Town Streets, Public Utility Easements or Other Town Property under this Section, the Town shall not perform work on Company Facilities unless specifically authorized by the Company in writing on a project by project basis and subject to the terms and conditions agreed to in such authorization.

§6.8 Relocation of Company Facilities.

A. Relocation Obligation. The Company shall temporarily or permanently remove, relocate, change or alter the position of any Company Facility (collectively, “Relocate(s),” “Relocation(s)” or “Relocated”) in Town Streets or in Other Town Property at no cost or expense to the Town whenever such Relocation is necessary for the completion of any Public Project. In the case of Relocation that is necessary for the completion of any Public Project in a Public Utility Easement that is not located within a Town Street, the Company shall not be responsible for any Relocation costs. In the event of any Relocation contemplated pursuant to this Section 6.8A, the Company and the Town agree to cooperate on the location and Relocation of the Company Facilities in the Town Streets or Other Town Property in order to achieve Relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has Relocated any Company Facility at the Town’s direction, if the Town requests that the same Company Facility be Relocated within two (2) years, the subsequent Relocation shall not be at the Company’s expense. Nothing provided herein shall prevent the Company from obtaining reimbursement of its Relocation costs from third parties.

B. Private Projects. Subject to Section 6.8.F, the Company shall not be responsible for the expenses of any Relocation required by Private Projects, and the Company has the right to require the payment of estimated Relocation expenses from the party causing, or responsible for, the Relocation before undertaking the Relocation.

C. Relocation Performance. The Relocations set forth in Section 6.8.A of this Franchise shall be completed within a reasonable time, not to exceed ninety (90) days from the later of the date on which the Town designee requests, in writing, that the Relocation commence, or the date when the Company is provided all Supporting Documentation. The Company shall notify the Town within twenty (20) days of the receipt of the request if the Supporting Documentation is insufficient to complete the project. The Company shall receive an extension of time to complete a Relocation where the Company's performance was delayed due to Force Majeure or the failure of the Town to provide adequate Supporting Documentation. The Company has the burden of
presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold or condition any such extension.

D. Town Revision of Supporting Documentation. Any revision by the Town of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding facility Relocation shall be deemed good cause for a reasonable extension of time to complete the Relocation under this Franchise.

E. Completion. Each such Relocation shall be complete only when the Company actually Relocates the Company Facilities, restores the Relocation site in accordance with Section 6.7 of this Franchise or as otherwise agreed with the Town, and removes from the site or properly abandons on site all unused facilities, equipment, material and other impediments.

F. Scope of Obligation. The Relocation obligation set forth in this Section shall only apply to Company Facilities located in Town Streets or Other Town Property. Notwithstanding anything to the contrary in this Franchise, the Company shall not be required to Relocate any Company Facilities from property (a) owned by the Company in fee; or (b) in which the Company has a property right, grant or interest, including without limitation an easement, but excluding Public Utility Easements.

G. Underground Relocation. Underground facilities shall be Relocated underground. Above ground facilities shall be Relocated above ground unless the Company is paid for the incremental amount by which the underground cost would exceed the above ground cost of Relocation, or the Town requests that such additional incremental cost be paid out of available funds under Article 11 of this Franchise.

H. Coordination.

(1) When requested in writing by the Town designee or the Company, representatives of the Town and the Company shall meet to share information regarding anticipated projects which will require Relocation of Company Facilities in the Town. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the Town for any Public Project.

(2) The Town shall make reasonable best efforts to provide the Company with two (2) years advance notice of any planned Street repaving, to the extent the Town has such information. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located underneath the Streets within the two-year period if practicable.

I. Proposed Alternatives or Modifications. Upon receipt of written notice of
a required Relocation, the Company may propose an alternative to or modification of the Public Project requiring the Relocation in an effort to mitigate or avoid the impact of the required Relocation of Company Facilities. The Town shall in good faith review the proposed alternative or modification. The acceptance of the proposed alternative or modification shall be at the sole discretion of the Town. In the event the Town accepts the proposed alternative or modification, the Company agrees to promptly compensate the Town for all additional costs, expenses or delay that the Town reasonably determines resulted from the implementation of the proposed alternative.

§6.9 Service to New Areas. If the territorial boundaries of the Town are expanded during the term of this Franchise, the Company shall, to the extent permitted by law, extend service to Residents in the expanded area at the earliest practicable time if the expanded area is within the Company’s PUC-certificated service territory. Service to the expanded area shall be in accordance with the terms of the Tariffs and this Franchise, including the payment of franchise fees.

§6.10 Company Facilities to Serve Town as Customer. Subject to the terms of the Tariff, upon receipt of the Town’s authorization for billing and construction, the Company shall install Company Facilities to provide Utility Service to the Town as a customer, without requiring the Town to advance funds prior to construction. The Town shall pay for the installation of Company Facilities once completed in accordance with the Tariffs.

§6.11 Technological Improvements. The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the Town when such advances are technically and economically feasible and are safe and beneficial to the Town and its Residents.

ARTICLE 7
RELIABILITY

§7.1 Reliability. The Company shall operate and maintain Company Facilities efficiently and economically and in accordance with the high standards and best systems, methods and skills consistent with the provision of adequate, safe and reliable Utility Service.

§7.2 Franchise Performance Obligations. The Company recognizes that, as part of its obligations and commitments under this Franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical and workmanlike manner.

§7.3 Reliability Reports. Upon written request, the Company shall provide the Town with a report regarding the reliability of Company Facilities and Utility Service.

ARTICLE 8
COMPANY PERFORMANCE OBLIGATIONS

§8.1 New or Modified Service to Town Facilities. In providing new or modified Utility Service to Town facilities, the Company agrees to perform as follows:
A. **Performance.** The Company shall complete each project requested by the Town within a reasonable time. Other than for traffic signal facilities, where the Company performance obligations are governed by the Tariff, the parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the Town designee makes a written request and provides the required Supporting Documentation for all Company Facilities. The Company shall notify the Town within twenty (20) days of receipt of the request if the Supporting Documentation is insufficient to complete the project. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the Town designee may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

B. **Town Revision of Supporting Documentation.** Any revision by the Town of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding new or modified service to Town facilities shall be deemed good cause for a reasonable extension of time to complete the Relocation under this Franchise.

C. **Completion/Restoration.** Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of this Franchise or as otherwise agreed with the Town and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

### §8.2 Adjustments to Company Facilities

The Company shall perform adjustments to Company Facilities, including manholes and other appurtenances in Streets, Public Utility Easements and Other Town Property, to accommodate Town Street maintenance, repair and paving operations at no cost to the Town. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

A. **Performance.** The Company shall complete each requested adjustment within a reasonable time, not to exceed thirty (30) days from the date upon which the Town makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

B. **Completion/Restoration.** Each such adjustment shall be complete only when the Company actually adjusts and, if required, readjusts, Company Facilities to accommodate Town operations in accordance with Town instructions following Town paving operations.

C. **Coordination.** As requested by the Town or the Company, representatives of the Town and the Company shall meet regarding anticipated Street maintenance
operations which will require such adjustments to Company Facilities in Streets or Other Town Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

§8.3 Third Party Damage Recovery

A. Damage to Company Interests. If any individual or entity damages any Company Facilities, to the extent permitted by law the Town will notify the Company of any such incident of which it has knowledge and will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

B. Damage to Company Property for which the Town is Responsible. If any individual or entity damages any Company Facilities for which the Town is obligated to reimburse the Company for the cost of the repair or replacement, to the extent permitted by law, the Company will notify the Town of any such incident of which it has knowledge and will provide to the Town within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

C. Meeting. The Company and the Town agree to meet periodically upon written request of either party for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company Facilities.

ARTICLE 9
BILLING AND PAYMENT

§9.1 Billing for Utility Services

A. Monthly Billing. Unless otherwise provided in the Tariffs, the rules and regulations of the PUC, or the Public Utility Law, the Company shall render bills monthly to the offices of the Town for Utility Service and other related services for which the Company is entitled to payment.

B. Address for Billing. Billings for service rendered during the preceding month shall be sent to the person(s) designated by the Town and payment for same shall be made as prescribed in this Franchise and the applicable Company Tariffs.

C. Supporting Documents. To the extent requested by the Town, the Company shall provide all billings and any underlying Supporting Documentation reasonably requested by the Town in an editable and manipulatable electronic format that is acceptable to the Company and the Town.

D. Annual Meetings. The Company agrees to meet with the Town designee on a reasonable basis for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats
which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company’s current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the Town.

§9.2 Payment to Town. In the event the Town determines after written notice to the Company that the Company is liable to the Town for payments, costs, expenses or damages of any nature, and subject to the Company’s right to challenge such determination, the Town may deduct all monies due and owing the Town from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company’s designee and a designee of the Town to discuss such determination. The Town agrees to attend such a meeting. As an alternative to such deduction and subject to the Company’s right to challenge, the Town may bill the Company for such assessment(s), in which case, the Company shall pay each such bill within thirty (30) days of the date of receipt of such bill unless it challenges the validity of the charge. If the Company challenges the Town determination of liability, the Town shall make such payments to the Company for Utility Service received by Town pursuant to the Tariffs until the challenge has been finally resolved.

ARTICLE 10
USE OF COMPANY FACILITIES

§10.1 Town Use of Company Electric Distribution Poles. The Town shall be permitted to make use of Company electric distribution poles in the Town, subject to the Tariff, without a use fee for the placement of Town equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose. The Town will notify the Company in advance and in writing of its intent to use Company distribution poles and the nature of such use unless it is impracticable to provide such advance notice because of emergency circumstances, in which event the Town will provide such notice as soon as practicable. The Town shall be responsible for costs associated with modifications to Company electric distribution poles to accommodate the Town's use of such Company electric distribution poles and for any electricity used. No such use of Company electric distribution poles may occur if it would constitute a safety hazard or would interfere with the Company's use of Company Facilities. Any such Town use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations.

§10.2 Third Party Use of Company Electric Distribution Poles. If requested in writing by the Town, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the Town to use the Streets, to utilize Company electric distribution poles in Town Streets and Other Town Property, subject to the Tariff, for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions including payment of fees established by the Company. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company electric distribution facilities. The Company shall not be required to permit the use of Company electric distribution poles for the provision of utility service except as otherwise required by law.
§10.3 Town Use of Company Street Lighting Poles. The Town shall be allowed to place attachments on the Company’s street lighting poles under the terms and conditions set forth in the Tariffs.

§10.4 Town Use of Company Transmission Rights-of-Way. The Company shall offer to grant to the Town use of transmission rights-of-way which it now, or in the future, owns in fee within the Town for trails and Parks on terms comparable to those offered to other municipalities; provided, however, that the Company shall not be required to make such an offer in any circumstance where such use would constitute a safety hazard or would interfere with the Company's use of the transmission right-of-way. In order to exercise this right, the Town must make specific, advance written request to the Company for any such use and must enter such written agreements as the Company may reasonably require reflecting such comparable terms and conditions.

§10.5 Emergencies. Upon written request, the Company shall assist the Town in developing an emergency management plan that is consistent with Company policies. The Town and the Company shall work cooperatively with each other in any emergency or disaster situation to address the emergency or disaster.

ARTICLE 11
UNDERGROUNDING OF OVERHEAD FACILITIES

§11.1 Underground Electrical Lines in New Areas. Upon payment to the Company of the charges provided in the Tariffs or their equivalent, the Company shall place all newly constructed electrical distribution lines in newly developed areas of the Town underground in accordance with laws, regulations and orders of the Town.

§11.2 Underground Conversion at Expense of Company.

A. Underground Fund. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's Electric Gross Revenues (the “Fund”), for the purpose of undergrounding its existing overhead electric distribution facilities in Town Streets, or Other Town Property within the Town, as may be requested by the Town Designee. If the City requires Relocation of overhead electric facilities in the Streets and Other City Property and there is no room to relocate the Facilities overhead, the Company may relocate the Facilities underground, and may charge the cost of undergrounding to the Fund.

B. Unexpended Portion and Advances. Any unexpended portion of the Fund shall be carried over to succeeding years and, in addition, upon request by the Town, the Company agrees to advance and expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance; provided that if there are less than three (3) years remaining under the term of this Franchise, the Company agrees to advance and expend only such amounts that the Company reasonably anticipates will be available under the preceding paragraph for the remaining term of this Franchise. Any amounts so advanced shall be credited against amounts to be expended in succeeding years. Any funds left accumulated under any prior franchise shall be carried over to this
Franchise. Notwithstanding the foregoing, the Town shall have no vested interest in monies allocated to the Fund and any monies in the Fund not expended at the expiration or termination of this Franchise shall remain the property of the Company. At the expiration or termination of this Franchise, the Company shall not be required to underground any existing overhead facilities pursuant to this Article, but may do so in its sole discretion.

C. Systemwide Undergrounding. If, during the term of this Franchise, the Company should receive authority from the PUC to undertake a systemwide program or programs of undergrounding its electric distribution facilities systemwide, the Company will budget and allocate to the program of undergrounding in the Town such amount as may be determined and approved by the PUC, but in no case shall such amount be less than the one percent (1%) of annual Electric Gross Revenues provided above.

D. Town Requirement to Underground. In addition to the provisions of this Article, the Town may require any above ground Company Facilities to be moved underground at the Town’s expense.

§11.3 Undergrounding Performance. Upon receipt of a written request from the Town, the Company shall underground Company Facilities pursuant to the provisions of this Article, in accordance with the procedures set forth in this Section.

A. Estimates. Promptly upon receipt of an undergrounding request from the Town and the Supporting Documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the Town to review and, if acceptable to the Town, the Town will issue a project authorization. The Company shall notify the Town within twenty (20) days of receipt of the request if the Supporting Documentation is insufficient to prepare the cost estimate for the project. The Town and the Company agree to meet at the Town’s request during the period when the Company is preparing its estimate to discuss all aspects of the project toward the end of enabling the Company to prepare an accurate cost estimate. At the Town’s request, the Company will provide all documentation that forms the basis of the estimate that is not proprietary. The Company will not proceed with any requested project until the Town has provided a written acceptance of the Company estimate.

B. Performance. The Company shall complete each undergrounding project requested by the Town within a reasonable time considering the size and scope of each project, not to exceed two hundred forty (240) days from the later of the date upon which the Town designee makes a written request or the date the Town provides to the Company all Supporting Documentation. The Company shall have one hundred twenty (120) days after receiving the Town’s written request to design project plans, prepare the good faith estimate, and transmit same to the Town designee for review. If Town approval of the plans and estimate has not been granted, the Company’s good faith estimate will be void sixty (60) days after delivery of the plans and estimate to the Town designee. If the plans and estimate are approved by the Town, the Company shall have one hundred twenty (120) days to complete the project, from the date of the Town
designee’s authorization of the underground project, plus any of the one hundred (120) unused days in preparing the good faith estimate. At the Company’s sole discretion, if the good faith estimate has expired because the Town designee has not approved the same within sixty (60) days, the Company may extend the good faith estimate or prepare a new estimate using current prices. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a Force Majeure condition. Upon written request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

C. Town Revision of Supporting Documentation. Any revision by the Town of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under this Franchise.

D. Completion/Restoration. Each such undergrounding project undertaken pursuant to this Article shall be complete only when the Company actually undergrounds the designated Company Facilities, restores the undergrounding site in accordance with Section 6.7 of this Franchise, or as otherwise agreed with the Town, and removes from the site any unused overhead or ground-mounted facilities, equipment, material and other impediments and properly abandons on site any abandoned underground facilities. “Unused” for the purposes of this Section shall mean that the Company is no longer using the facilities in question and has no plans to use the facilities in the foreseeable future. When performing underground conversions of overhead facilities, the Company shall make reasonable efforts consistent with its contractual obligations to persuade joint users of Company distribution poles to remove their facilities from such poles within the time allowed by this Article.

E. Report of Actual Costs. Upon completion of each undergrounding project undertaken pursuant to this Article, the Company shall submit to the Town a detailed report of the Company’s actual cost to complete the project and the Company shall reconcile this total actual cost with the accepted cost estimate. The report shall be provided within one hundred twenty (120) days after completion of the project and written request from the Town.

F. Audit of Underground Projects. The Town may require the Company to undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The cost of any such independent audit shall reduce the amount of the Fund. The Company shall cooperate with any audit and the independent auditor shall prepare and provide to the Town and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the Town, only those actual project costs confirmed and verified by the independent auditor as commercially reasonable and necessary to complete the project shall be charged against the Fund balance.
§11.4 Audit of Underground Fund. Upon written request, but no more frequently than once every three (3) years, the Company shall audit the Fund for the Town. Such audits shall be limited to the previous three (3) calendar years. The Company shall provide the audit report to the Town and shall reconcile the Fund consistent with the findings contained in the audit report. If the Town has concerns about any material information contained in the audit, the parties shall meet and make good faith attempts to resolve any outstanding issues. If the matter cannot be resolved to the Town’s reasonable satisfaction, the Company shall cause an independent auditor to investigate and determine the correctness of the charges to the Fund. The independent auditor shall provide a written report containing its findings to the Town and the Company. The Company shall reconcile the Fund consistent with the findings contained in the independent auditor’s written report. The Company shall pay the costs of any audit and investigation from the Fund balance.

§11.5 Cooperation with Other Utilities. When undertaking an undergrounding project the Town and the Company shall coordinate with other utilities or companies that have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, to the extent the Company has received prior written notification, the Company shall cooperate with these utilities and companies and undertake to underground Company Facilities as part of the same project where financially, technically and operationally feasible. The Company shall not be required to pay for any costs of undergrounding the facilities of other companies or the Town.

§11.6 Planning and Coordination of Undergrounding Projects. The Town and the Company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this Article as a part of the review and planning for other Town and Company construction projects. The Town and the Company agree to meet, as required, to review the progress of the current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the Town and the Company in order to achieve the orderly undergrounding of Company Facilities. Representatives of both the Town and the Company shall meet periodically to review the Company's undergrounding of Company Facilities and at such meetings shall review:

A. Undergrounding, including conversions, Public Projects and replacements that have been accomplished or are underway, together with the Company's plans for additional undergrounding; and

B. Public Projects anticipated by the Town.

ARTICLE 12
PURCHASE OR CONDEMNATION

§12.1 Municipal Right to Purchase or Condemn.

A. Right and Privilege of Town. The right and privilege of the Town to construct, own and operate a municipal utility, and to purchase pursuant to a mutually
acceptable agreement or condemn any Company Facilities located within the territorial boundaries of the Town, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution, statutes and case law of the State of Colorado relating to the acquisition of public utilities, are expressly recognized. The Town shall have the right, within the time frames and in accordance with the procedures set forth in such provisions, to condemn Company Facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the Town. In the event of any such purchase, no value shall be ascribed or given to the rights granted under this Franchise in the valuation of the property thus sold.

B. Notice of Intent to Purchase or Condemn. The Town shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company Facilities. Nothing in this Section shall be deemed or construed to constitute a consent by the Company to the Town’s purchase or condemnation of Company Facilities, nor a waiver of any Company defenses or challenges related thereto.

ARTICLE 13
MUNICIPALLY PRODUCED UTILITY SERVICE


A. Town Reservation. The Town expressly reserves the right to engage in the production of utility service to the extent permitted by law. The Company agrees to negotiate in good faith long term contracts to purchase Town-generated power made available for sale, consistent with PUC requirements, other applicable legal requirements, and standards generally applicable to the electric utility, gas utility or pipeline industries. The Company further agrees to offer transmission and delivery services to the Town that are required by judicial, statutory and/or regulatory directive and that are comparable to the services offered to any other customer with similar generation facilities.

B. Franchise not to Limit Town’s Rights. Nothing in this Franchise prohibits the Town from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law, nor does it affect the Company’s rights and obligations pursuant to any Certificate of Public Convenience and Necessity issued by the PUC.

ARTICLE 14
ENVIRONMENT AND CONSERVATION

§14.1 Environmental Leadership. The Town and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this Franchise. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of Energy Conservation and Energy Efficiency measures, Clean Energy measures, and promoting and implementing the use of Renewable Energy Resources on both a distributed and centralized basis. The Company shall continue to cost-effectively monitor its operations to mitigate
environmental impacts; shall meet the requirements of environmental laws, regulations and permits; shall invest in cost-effective, environmentally sound technologies; shall consider environmental issues in its planning and decision making; and shall support environmental research and development projects and partnerships in our communities through various means, including but not limited to corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines. On or before December 1 of each year, the Company shall provide the Town a written report describing its progress in carbon reduction and other environmental efforts, and the parties shall meet at a mutually convenient time and place for a discussion of such. In meeting its obligation under this Section, the Company is not precluded from providing existing internal and external reports that may be used for other reporting requirements.

§14.2 Conservation. The Town and the Company recognize and agree that Energy Conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The Town and the Company further recognize that creative and effective Energy Conservation solutions are crucial to sustainable development. The Company recognizes and shares the Town’s stated objectives to advance the implementation of cost-effective Energy Efficiency and Energy Conservation programs that direct opportunities to Residents to manage more efficiently their use of energy and thereby create the opportunity to reduce their energy bills. The Company commits to offer programs that attempt to capture market opportunities for cost-effective Energy Efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate Energy Efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy according to current and future demand side management (“DSM”) programs. In doing so, the Company recognizes the importance of (i) implementing cost-effective programs the benefits of which would otherwise be lost if not pursued in a timely fashion; and (ii) developing cost-effective programs for the various classes of the Company’s customers, including low-income customers. The Company shall advise the Town and its Residents of the availability of assistance that the Company makes available for investments in Energy Conservation through newspaper advertisements, bill inserts and Energy Efficiency workshops and by maintaining information about these programs on the Company’s website. Further, the Company will designate a conservation representative to act as the primary liaison with the Town who will provide the Town with information on how the Town may take advantage of reducing energy consumption in Town facilities and how the Town may participate in Energy Conservation and Energy Efficiency programs sponsored by the Company. As such, the Company and the Town commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and Residents, including low-income customers. The Company agrees to help the Town participate in Company programs and, when opportunities exist to partner with others,
such as the State of Colorado, the Company will help the Town pursue those opportunities. In addition, and in order to assist the Town and its Residents’ participation in Renewable Energy Resource programs, the Company shall: notify the Town regarding eligible Renewable Energy Resource programs; provide the Town with technical support regarding how the Town may participate in Renewable Energy Resource programs; and advise Residents regarding eligible Renewable Energy Resource programs. Notwithstanding the foregoing, to the extent that any Company assistance is needed to support Renewable Energy Resource Programs that are solely for the benefit of Company customers located within the Town, the Company retains the sole discretion as to whether to incur such costs.

§14.3 Continuing Commitment. It is the express intention of the Town and the Company that the collaborative effort provided for in this Article continue for the entire term of this Franchise. The Town and the Company also recognize, however, that the programs identified in this Article may be for a limited duration and that the regulations and technologies associated with Energy Conservation are subject to change. Given this variability, the Company agrees to maintain its commitment to sustainable development and Energy Conservation for the term of this Franchise by continuing to provide leadership, support and assistance, in collaboration with the Town, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this Franchise in order to help the Town achieve its environmental goals.

§14.4 PUC Approval. Nothing in this Article shall be deemed to require the Company to invest in technologies or to incur costs that it has a good faith belief the PUC will not allow the Company to recover through the ratemaking process.

ARTICLE 15
TRANSFER OF FRANCHISE

§15.1 Consent of Town Required. The Company shall not transfer or assign any rights under this Franchise to an unaffiliated third party, except by merger with such third party, or, except when the transfer is made in response to legislation or regulatory requirements, unless the Town approves such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld, conditioned or delayed.

§15.2 Transfer Fee. In order that the Town may share in the value this Franchise adds to the Company’s operations, any transfer or assignment of rights granted under this Franchise requiring Town approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the Town a transfer fee in an amount equal to the proportion of the Town’s then-population provided Utility Service by the Company to the then-population of the Town and County of Denver provided Utility Service by the Company multiplied by one million dollars ($1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of Residents.
ARTICLE 16
CONTINUATION OF UTILITY SERVICE

§16.1 Continuation of Utility Service. In the event this Franchise is not renewed at the expiration of its term or is terminated for any reason, and the Town has not provided for alternative utility service, the Company shall have no right or obligation to discontinue providing Utility Service within the Town as required by the Public Utilities Law unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the Town until the Town arranges for utility service from another provider. The Town acknowledges and agrees that the Company has the right to use Streets, Other Town Property and Public Utility Easements during any such period subject to Town Code and regulations as set forth in Section 3.3. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public. The Town agrees that in the circumstances of this Article, the Company shall be entitled to monetary compensation as provided in the Tariffs and the Company shall be entitled to collect from Residents and, upon the Town’s compliance with applicable provisions of law, shall be obligated to pay the Town, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the Town’s Streets, Other Town Property and Public Utility Easements. Only upon receipt of written notice from the Town stating that the Town has adequate alternative utility service for Residents and upon order of the PUC shall the Company be allowed to discontinue the provision of Utility Service to the Town and its Residents.

ARTICLE 17
INDEMNIFICATION AND IMMUNITY

§17.1 Town Held Harmless. The Company shall indemnify, defend and hold the Town harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or directly arising from the grant of this Franchise, and the exercise by the Company of the related rights, or from the operations of the Company within the Town, and shall pay the costs of defense plus reasonable attorneys’ fees. The Town shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the Town seeks indemnification hereunder; and, (b) unless in the Town’s judgment a conflict of interest may exist between the Town and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel reasonably satisfactory to the Town. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. If such defense is not assumed by the Company or if the Town determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this Franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the Town or any of its officers or employees or to the extent that the claim, demand or lien arises out of the Town’s status as a customer of record.
§17.2 **Immunity.** Nothing in this Section or any other provision of this Franchise shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Town may have under the Colorado Governmental Immunity Act (§24-10-101, C.R. S., et. seq.) or of any other defenses, immunities, or limitations of liability available to the Town by law.

**ARTICLE 18**

**BREACH**

§18.1 **Non-Contestability.** The Town and the Company agree to take all reasonable and necessary actions to assure that the terms of this Franchise are performed. The Company reserves the right to seek a change in its Tariffs, including but not limited to the rates, charges, terms, and conditions of providing Utility Service to the Town and its Residents, and the Town retains all rights that it may have to intervene and participate in any such proceedings.

§18.2 **Breach.**

A. **Notice/Cure/Remedies.** Except as otherwise provided in this Franchise, if a party (the “Breaching Party”) to this Franchise fails or refuses to perform any of the terms or conditions of this Franchise (a “Breach”), the other party (the “Non-Breaching Party”) may provide written notice to the Breaching Party of such Breach. Upon receipt of such notice, the Breaching Party shall be given a reasonable time, not to exceed thirty (30) days in which to remedy the Breach or, if such Breach cannot be remedied in thirty (30) days, such additional time as reasonably needed to remedy the Breach, but not exceeding an additional thirty (30) day period, or such other time as the parties may agree. If the Breaching Party does not remedy the Breach within the time allowed in the notice, the Non-Breaching Party may exercise the following remedies for such Breach:

1. specific performance of the applicable term or condition as allowed by law; and

2. recovery of actual damages from the date of such Breach incurred by the Non-Breaching Party in connection with the Breach, but excluding any special, punitive or consequential damages.

B. **Termination of Franchise by Town.** In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this Franchise (a “Material Breach”), the Town may provide written notice to the Company of such Material Breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days in which to remedy the Material Breach if the Material Breach can be cured within that time period, or, if such Material Breach cannot be remedied in ninety (90) days, such additional time as reasonably needed to remedy the Material Breach, but not exceeding an additional ninety (90) day period, or such other time as the parties may agree. If the Company does not remedy the Material Breach within the time allowed in the notice, the Town may, at its sole option, terminate this Franchise. This remedy shall be in addition to the Town’s right to exercise any of the
remedies provided for elsewhere in this Franchise. Upon such termination, the Company shall continue to provide Utility Service to the Town and its Residents (and shall continue to have associated rights and grants needed to provide such service) until the Town makes alternative arrangements for such service and until otherwise ordered by the PUC. In addition, unless otherwise prohibited by law, after termination of this Franchise and upon the Town complying with applicable provisions of law, the Company shall be entitled to collect from Residents, and shall be obligated to pay the Town, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the Town Streets and Other Town Property.

C. Company Shall not Terminate Franchise. In no event does the Company have the right to terminate this Franchise.

D. No Limitation. Except as provided herein, nothing in this Franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged Breach of this Franchise.

ARTICLE 19
AMENDMENTS

§19.1 Proposed Amendments. At any time during the term of this Franchise, the Town or the Company may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party.

§19.2 Effective Amendments. No alterations, amendments or modifications to this Franchise shall be valid unless executed in writing by the parties, which alterations, amendments or modifications shall be adopted with the same formality used in adopting this Franchise, to the extent required by law. Neither this Franchise, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever.

ARTICLE 20
EQUAL OPPORTUNITY

§20.1 Economic Development. The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business community. The Company believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is committed also to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that
contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders.

§20.2 Employment.

A. Programs. The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for positions at all skill and management levels within the Company.

B. Businesses. The Company recognizes that the Town and the business community in the Town, including women and minority owned businesses, provide a valuable resource in assisting the Company to develop programs to promote persons of color, women and members of under-represented communities into management positions, and agrees to keep the Town regularly advised of the Company's progress by providing the Town a copy of the Company's annual affirmative action report upon the Town’s written request.

C. Recruitment. In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies such as partnering with colleges, universities and technical schools with diverse student populations, utilizing diversity-specific media to advertise employment opportunities, internships, and engaging recruiting firms with diversity-specific expertise.

D. Advancement. The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and members of under-represented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training and leadership programs.

E. Non-Discrimination. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, creed, color, religion, sex, age, national origin or ancestry or handicap, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified.

F. Board of Directors. The Company shall identify and consider women, persons of color and other under-represented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the Shareholders, customers and employees of the Company.

§20.3 Contracting.

A. Contracts. It is the Company's policy to make available to minority and women owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers,
contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to minority and women owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.

B. Community Outreach. The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the participation of minority and women owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the Town regularly advised of the Company's programs.

C. Community Development. The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing predominately minority owned, women owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority owned, women owned and disadvantaged businesses to contract with the Company.

§20.4 Coordination. Town agencies provide collaborative leadership and mutual opportunities or programs relating to Town based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Article with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation.

ARTICLE 21
MISCELLANEOUS

§21.1 No Waiver. Neither the Town nor the Company shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

§21.2 Successors and Assigns. The rights, privileges, and obligations, in whole or in part, granted and contained in this Franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article 15 of this Franchise. Upon a transfer or assignment pursuant to Article 15, the Company shall be relieved from all liability from and after the date of such transfer, except as otherwise provided in the conditions imposed by the Town in authorizing the transfer or assignment.

§21.3 Third Parties. Nothing contained in this Franchise shall be construed to provide rights to third parties.
§21.4 Notice. Both parties shall designate from time to time in writing representatives for the Company and the Town who will be the persons to whom notices shall be sent regarding any action to be taken under this Franchise. Notice shall be in writing and forwarded by certified mail, reputable overnight courier or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Notice shall be deemed received (a) three (3) days after being mailed via the US Postal Service, (b) one (1) business day after mailed if via reputable overnight courier, or (c) upon hand delivery if delivered by courier. Until any such change shall hereafter be made, notices shall be sent as follows:

To the Town:

    Town Manager
    Town of Timnath
    4800 Goodman Street
    Timnath, Colorado 8054

With a copy to:

    Town Attorney
    Town of Timnath
    4800 Goodman Street
    Timnath, Colorado 8054

To the Company:

    Regional Vice President, Customer and Community Relations
    Public Service Company of Colorado
    P.O. Box 840
    Denver, Colorado 80201

With a copy to:

    Legal Department
    Public Service Company of Colorado
    P.O. Box 840
    Denver, Colorado 80201

and

    Area Manager
    Public Service Company of Colorado
    2655 North 63rd Street
    Boulder, CO 80301
§21.5 Examination of Records.

A. The parties agree that a duly authorized representative of the Town shall have the right to examine any books, documents, papers, and records of the Company reasonably related to the Company’s compliance with the terms and conditions of this Franchise. Information shall be provided within thirty (30) days of any written request. Any books, documents, papers, and records of the Company in any form that are requested by the Town, that contain confidential information shall be conspicuously identified as “confidential” or “proprietary” by the Company. In no case shall any privileged communication be subject to examination by the Town pursuant to the terms of this Section. “Privileged communication” means any communication that would not be discoverable due to the attorney client privilege or any other privilege that is generally recognized in Colorado, including but not limited to the work product privilege. The work product privilege shall include information developed by the Company in preparation for PUC proceedings.

B. With respect to any information requested by the Town which the Company identifies as “Confidential” or “Proprietary”:

   (1) The Town shall maintain the confidentiality of the information by keeping it under seal and segregated from information and documents that are available to the public;

   (2) The information shall be used solely for the purpose of determining the Company’s compliance with the terms and conditions of this Franchise;

   (3) The information shall only be made available to Town employees and consultants who represent in writing that they agree to be bound by the provisions of this subsection B;

   (4) The information shall be held by the Town for such time as is reasonably necessary for the Town to address the Franchise issue(s) that generated the request, and shall be returned to the Company when the Town has concluded its use of the information. The parties agree that in most cases, the information should be returned within one hundred twenty (120) days. However, in the event that the information is needed in connection with any action that requires more time, including, but not necessarily limited to litigation, administrative proceedings and/or other disputes, the Town may maintain the information until such issues are fully and finally concluded.

C. If an Open Records Act request is made by any third party for confidential or proprietary information that the Company has provided to the Town pursuant to this Franchise, the Town will promptly notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the Town. In no circumstance shall the Town provide to any third party confidential information
provided by the Company pursuant to this Franchise without first conferring with the Company. The Company shall defend, indemnify and hold the Town harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

D. Unless otherwise agreed between the parties, the following information shall not be provided by the Company: confidential employment matters, specific information regarding any of the Company’s customers, information related to the compromise and settlement of disputed claims including but not limited to PUC dockets, information provided to the Company which is declared by the provider to be confidential, and which would be considered confidential to the provider under applicable law.

§21.6 List of Utility Property. The Company shall provide the Town, upon request not more than once every two (2) years, a list of electric utility-related real property owned in fee by the Company within the County in which the Town is located, including the physical address of the property if readily available on the deed at the time of the request. All such records must be kept for a minimum of three (3) years or such shorter duration if required by Company policy.

§21.7 PUC Filings. Upon written request by the Town, the Company shall provide the Town non-confidential copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the Colorado Public Utilities Commission. Notwithstanding the foregoing, notice regarding any gas and electric filings that may affect Utility Service rates in the Town shall be sent to the Town upon filing.

§21.8 Information. Upon written request, the Company shall provide the Town Clerk or the Town Clerk’s designee with:

A. a copy of the Company’s or its parent company’s consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company’s website;

B. maps or schematics indicating the location of specific Company Facilities (subject to Town executing a confidentiality agreement as required by Company policy), including gas or electric lines, located within the Town, to the extent those maps or schematics are in existence at the time of the request and related to an ongoing project within the Town. The Company does not represent or warrant the accuracy of any such maps or schematics; and

C. a copy of any report required to be prepared for a federal or state agency detailing the Company’s efforts to comply with federal and state air and water pollution laws.

§21.9 Payment of Taxes and Fees.

A. Impositions. The Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees,
municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this Franchise ("Impositions"), and shall not be in breach of this Section so long as it is actively contesting such Impositions.

B. Town Liability. The Town shall not be liable for the payment of taxes, late charges, interest or penalties of any nature other than pursuant to applicable Tariffs.

§21.10 Conflict of Interest. The parties agree that no official, officer or employee of the Town shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the Town to the extent prohibited by law, including ordinances and regulations of the Town.

§21.11 Certificate of Public Convenience and Necessity. The Town agrees to support the Company’s application to the PUC to obtain a Certificate of Public Convenience and Necessity to exercise its rights and obligations under this Franchise.

§21.12 Authority. Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this Franchise on behalf of the parties and to bind the parties to its terms. The persons executing this Franchise on behalf of each of the parties warrant that they have full authorization to execute this Franchise. The Town acknowledges that notwithstanding the foregoing, the Company requires a Certificate of Public Convenience and Necessity from the PUC in order to operate under the terms of this Franchise.

§21.13 Severability. Should any one or more provisions of this Franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, to the extent allowed by law, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one or more substitute provisions that will achieve the original intent of the parties hereunder.

§21.14 Force Majeure. Neither the Town nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to Force Majeure, as defined herein.

§21.15 Earlier Franchises Superseded. This Franchise shall constitute the only franchise between the Town and the Company related to the furnishing of Utility Service, and it supersedes and cancels all former franchises between the parties hereto.

§21.16 Titles not Controlling. Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this Franchise.
§21.17 Applicable Law. Colorado law shall apply to the construction and enforcement of this Franchise. The parties agree that venue for any litigation arising out of this Franchise shall be in the District Court for Arapahoe County, State of Colorado.

§21.18 Payment of Expenses Incurred by Town in Relation to Franchise Agreement. The Company shall pay for expenses reasonably incurred by the Town for the adoption of this Franchise, including any Franchise election, the publication of notices, publication of ordinances, and photocopying of documents.

§21.19 Incremental Costs. The parties acknowledge that PUC rules, regulations and final decisions may require that incremental costs of complying with certain provisions of this Franchise be borne by customers of the Company who are located within the Town.

§21.20 Conveyance of Town Streets, Public Utility Easements or Other Town Property. In the event the Town vacates, releases or sells, conveys, transfers or otherwise disposes of a Town Street, or any portion of a Public Utility Easement or Other Town Property in which Company Facilities are located, the Town shall reserve an easement in favor of the Company over that portion of the Street, Public Utility Easement or Other Town Property in which such Company Facilities are located. The Company and the Town shall work together to prepare the necessary legal description to effectuate such reservation. For the purposes of Section 6.8.A of this Franchise, the land vacated, released, sold, conveyed, transferred or otherwise disposed of by the Town shall no longer be deemed to be a Street or Other Town Property from which the Town may demand the Company temporarily or permanently Relocate Company Facilities at the Company’s expense.

IN WITNESS WHEREOF, the parties have caused this Franchise to be executed as of the day and year first above written.

TOWN OF TIMNATH

ATTEST:

____________________________________
Jill Grossman-Belisle, Mayor

Melissa Peters, Town Clerk
“COMPANY”

PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation

By: __________________________________________
       Jerome Davis, Regional Vice President,
       Customer and Community Relations

STATE OF COLORADO     )
                           )SS.
COUNTY OF DENVER     )

The foregoing instrument was acknowledged before me this ___ day of __________, 2014 by Jerome Davis, Regional Vice President, Customer and Community Relations of Public Service Company of Colorado, a Colorado corporation.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires ____________________.
EXECUTIVE SUMMARY: Sketch Plan proposal for Brunner Farm Subdivision, a one hundred and five (105) acre low density residential development, zoned R-2 and M-U. The Sketch Plan proposes subdivision into single family lots with a variety of sizes ranging from 7,000 square feet to lots that will be 1/2 – acre in size, with the existing farmhouse remaining on a one (1) acre lot.

STAFF RECOMMENDATION: Staff recommends the approval of the Sketch Plan.

KEY POINTS/SUPPORTING INFORMATION:

Owner: Grant and Gregory Brunner, GL Brunner Farms, LLC and Timnath Holdings, LLC
Applicant: Jim Birdsall, The Birdsall Group
Location: South of and adjacent to CR 36/River Pass Road, and west of and adjacent to Three Bell Parkway

Application Type: Sketch Plan  Case Number: SP-2013-001
Parcel Size (Acres): Approximately 105.36 acres

Process Schedule

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<th>Task</th>
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<tbody>
<tr>
<td>Application Submitted</td>
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<tr>
<td>Acceptance of Application</td>
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<td>09/10/13</td>
</tr>
<tr>
<td>Referral Agency Notification</td>
<td>Referral comments were due by 09/27/13</td>
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<tr>
<td>Comments Issued</td>
<td>Comments submitted to applicant on 10/02/13</td>
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<td>Notifications</td>
<td>Notification in Fort Collins Coloradoan</td>
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<td></td>
<td>Notices mailed to adjacent property owners</td>
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<tr>
<td>Planning Commission</td>
<td>Public Hearing</td>
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<tr>
<td>Town Council</td>
<td>Public Hearing</td>
<td>02/25/14</td>
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SERVICES:

Water: Fort Collins – Loveland Water District
Sewer: South Fort Collins Sanitation District
Fire: Poudre Fire Authority
Special Districts: None

Adjacent Zoning/Land Uses:

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<tr>
<th>Direction</th>
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<th>Land Use</th>
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<tr>
<td>North</td>
<td>CR 36; Agricultural (FA-1)</td>
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<tr>
<td>South</td>
<td>Agricultural (FA-1)</td>
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<td>East</td>
<td>C-2 and R-2; Three Bell Parkway</td>
<td>Community Commercial and Residential</td>
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<tr>
<td>West</td>
<td>Agricultural (FA-1)</td>
<td>Residential/farming</td>
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</tbody>
</table>

Existing Zoning: FA-1  Proposed Zoning: R-2, Single Family Residential and M-U, Mixed Use
Existing Land Use: Vacant  Proposed Land Use: Single Family Residential

Application Description:
The Brunner Farm Subdivision is intended to create 202 Single Family Lots, ranging in size from .18 to about .5 acres each. The site will have primary access off of CR 36 / River Pass Road and Three Bell Parkway, as well as the continuation of Summerfields Parkway. The proposal includes a neighborhood park, three (3) smaller pocket parks, and a trail network. Outlot A, on the west side of the property, is designed to allow for the Poudre River Trail. This parcel will be conveyed to Larimer County for construction of the trail as the other regional connections are made. The rest of Outlot A and Outlot B (currently tract K) will be maintained by the County as open space. Active and passive recreation areas as well as landscaped water quality areas are included within the development.

Future Approvals/Processes:
1. Preliminary Plat– On Town Council Agenda 02/25/2014
2. Final Plat– On Town Council Agenda 02/25/2014

Sketch Plan Review Criteria:
The Town shall use the following criteria in addition to other applicable provisions of this Code to evaluate the applicant’s sketch plan application:

1. The land use mix within the project conforms to Town’s Zoning District Map and Land Use Map and furthers the goals and policies of the Comprehensive Plan including:
   a. The proposed development promotes Timnath’s small town, rural character;
   b. Proposed residential development adds diversity to the Town’s housing supply;
   c. Proposed commercial development will benefit the Town’s economic base;
   d. Parks and open space are incorporated into the site design;
   e. The proposed project protects the Town’s environmental quality; and
   f. The development enhances cultural, historical, educational and/or human service opportunities.

The submitted Sketch Plan meets the applicable criteria.
2. The sketch plan represents a functional system of land use and is consistent with the rationale and criteria set forth in this Code and the Town Comprehensive Plan.  
*The submitted Sketch Plan is consistent with these criteria and Town of Timnath Codes and standards.*

3. The utility and transportation design is adequate, given existing and planned capacities of those systems.  
*The submitted Sketch Plan meets these criteria.*

4. Negative impacts on adjacent land uses have been identified and satisfactorily mitigated.  
*No negative impacts are being created.*

5. There is a need or desirability within the community for the applicant’s development and the development will help achieve a balance of land use and/or housing types within Timnath according to Town goals.  
*The Sketch Plan proposal is consistent with these goals.*

**REFERRAL COMMENTS:**

*Not returned:* AT&T Communications, Poudre School District, Poudre River Public Library District, Centurylink, Timnath Finance, Timnath Public Works, Xcel Energy, Timnath Town Attorney.

*Returned with no comments:* Poudre Fire Authority, Fort Collins/Loveland Water District / South Fort Collins Sanitation District, Timnath Police Department, Larimer County Department of Natural Resources.

*Returned with comments:* Town Planner, Timnath Engineering.

**PLANNING COMMISSION RECOMMENDATION:**

On 02/18/14 the Planning Commission unanimously recommended approval of this Sketch Plan to the Town Council, with the following condition:

a. Prior to approval of the Sketch Plan by the Timnath Town Council, the property known as the Brunner Farm Annexation is to be annexed and zoned within the Town of Timnath

**RECOMMENDED MOTION:**

I move to approve the Brunner Farm Subdivision Sketch Plan.

**ATTACHMENTS:**

1. Resolution 13, Series 2014
2. Brunner Farm Sketch Plan
3. Brunner Farm Sketch Plan Narrative
TOWN OF TIMNATH, COLORADO

RESOLUTION NO. 13, SERIES 2014

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF TIMNATH APPROVING THE
SKETCH PLAN FOR BRUNNER FARM SUBDIVISION, GENERALLY LOCATED SOUTH OF
AND ADJACENT TO CR 36/RIVER PASS ROAD, AND WEST OF AND ADJACENT TO
THREE BELL PARKWAY

WHEREAS, Grant and Gregory Brunner, GL Brunner Farms, LLC and Timnath
Holdings, LLC (the “Developer”) has submitted a Sketch Plan for the Brunner Farm
Subdivision, more particularly described in Exhibit A (legal description) and Exhibit B
(Sketch Plan) and attached hereto and incorporated herein by this reference (the
“Property”); and

WHEREAS, a properly noticed public hearing was held on February 18, 2014, and the
above described Sketch Plan was recommended to the Town Council for approval by
the Town of Timnath Planning Commission with the following conditions:

a. Prior to approval of the Sketch Plan by the Timnath Town Council, the Brunner
Farm Annexation is to be annexed and zoned within the Town of Timnath

WHEREAS, a properly noticed public hearing with the Town Council was held on
February 25, 2014 and upon hearing the statements of staff, the applicant(s) and giving
consideration to the recommendations, the Town Council determines as provided below.

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH,
COLORADO:

Section 1. Sketch Plan

The Sketch Plan for Brunner Farm Subdivision is approved as presented.

PASSED, APPROVED AND ADOPTED THIS 25 DAY OF FEBRUARY, 2014.

TOWN OF TIMNATH, COLORADO

__________________________________________
Jill Grossman-Belisle, Mayor

ATTEST:

__________________________________________
Milissa Peters, Town Clerk
EXHIBIT A

Legal Description of Property Proposed for Sketch Plan

A tract of land located in Section 11, Township 6 North, Range 68 West of the 6th Principal Meridian, Town of Timnath, County of Larimer, State of Colorado and being more particularly described as follows:

Considering the North line of the Northeast Quarter of said Section 11 as bearing North 88°35'19" East with all other bearings herein relative thereto:

COMMENCING at the North Quarter Corner of Section 11; thence along the West line of the Northeast Quarter of Section 11, South 00° 58' 24" West, 30.03 feet to the Point of Beginning, said point being on the South right-of-way line of County Road 36; thence along said South line, North 88° 35' 19" East, 2511.45 feet to the West right-of-way line of County Road 3; thence along said West line, South 00° 34' 57" East, 2495.14 feet; thence, North 77° 19' 47" West, 1304.81 feet to a point on the West line of the Southeast Quarter of the Northeast Quarter; thence along said West line, North 00° 11' 36" East, 692.14 feet; thence, North 23° 51' 18" West, 213.43 feet to a point on the South line of the Northwest Quarter of the Northeast Quarter; thence along said South line, South 88° 48' 49" West, 1201.12 feet to the Center North Sixteenth Corner of Section 11; thence along the West line of the Northeast Quarter of Section 11, North 00° 58' 24" East, 1284.68 feet to the Point of Beginning.

The above described tract of land contains 4,589,386 square feet or 105.358 acres more or less and is subject to all easements and right-of-way now on record or existing.
EXHIBIT B

Sketch Plan

[attached]
Brunner Farm Subdivision
This request is for subdivision plat for approximately 105.36 acres known as the Brunner Farm Subdivision. There will be total of 202 lots averaging from 7,000 sq. ft. to 27,000 sq. ft. Overall gross density is 1.99 dwelling units per acre. The project has densities that are consistent with the R-2 Zone District Standards and the Land Use Map of the Comprehensive Plan, which is designated as Low Density Residential. The density and location is appropriate for this site.

The Brunner Farm Subdivision is consistent with the following sections of Chapter 16.2 of the Land Use Code:

16.2.1 Vision and intent
The Brunner Farm Subdivision embodies most all of the statements in this section. Notably, the project is walkable and pedestrian oriented. The project provides detached sidewalks throughout the development. In addition an 8’ wide passive trail connection is provided through various greenbelt areas. The 8’ trail provides connections to the neighborhood park as well as to the neighborhoods to the east. The project will also provide an orderly street pattern with tree-lined streets, one and two story buildings, and a safe friendly community. The subdivision is in an appropriate location and is similar in density with the existing surrounding residential developments. Brunner Farm Subdivision provides a neighborhood layout that is intended to be consistent with the surrounding neighborhoods.

16.2.7. Lots and blocks
The lot and block layout of the Brunner Farm Subdivision is consistent with this section. The majority of the streets are gridlike and the lengths of the blocks are appropriate. The lot sizes are appropriate for the R-2 zoning district.

16.2.8. Streets
The street pattern in the Brunner Farm Subdivision consists of local streets in a modified grid pattern, providing connections within the development and to the adjacent existing streets. All of the streets have detached sidewalks, street trees and a greenway, which creates a safe, efficient and attractive experience for both vehicles and pedestrians.

16.2.10 Sidewalks, multi-use pathways and trails
On-street sidewalks are provided throughout the Brunner Farm Subdivision providing linkages within the subdivision and to the surrounding neighborhoods. 8’ wide multi-use trail connections are provided with linkages to the neighborhood park and the public sidewalks along Three Bells Parkway and County Road 36.
16.2.12 Parks and open space

The Brunner Farm subdivision is designed to have great trail and sidewalk connectivity and has an abundance of diverse parks and open spaces, which will provide for a fantastic set of amenities (both within the Brunner Farm subdivision and nearby) for the residents of Brunner Farm. Described below are the various amenities that are available.

Neighborhood Park:
The Brunner Farm provides for a neighborhood park located near the center of the subdivision making it very accessible and an easy walk to all residents within the Brunner Farm. Timnath code requires a 5 acre neighborhood park for all subdivisions that include 200 lots or more. Subdivisions smaller than 200 lots do not require a neighborhood park of any size. The Brunner Farm includes 202 lots. Typically the required neighborhood park would be built and maintained by the Town of Timnath. The park as proposed is smaller than the 5 acre required but provides for amenities that are above and beyond the amenities required by code.

<table>
<thead>
<tr>
<th>Code Required Amenities:</th>
<th>Amenities Provided:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Play Areas</td>
<td>Active Play Areas</td>
</tr>
<tr>
<td>Sprinklered Landscaping</td>
<td>Sprinklered Landscaping</td>
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<tr>
<td></td>
<td>Enhanced Landscaping</td>
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<tr>
<td></td>
<td>Great Lawn Turf play area</td>
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<td></td>
<td>Event Lawn</td>
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<td></td>
<td>Garden Lawn</td>
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<td>Plaza</td>
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<td></td>
<td>Fire Pit</td>
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<tr>
<td></td>
<td>Pavilion</td>
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<tr>
<td></td>
<td>Benches</td>
</tr>
</tbody>
</table>

This neighborhood park has been presented to the Town of Timnath in conceptual format. The final design of the park will be provided to the Town with the revised landscape plans.

Pocket Parks:
There are 3 pocket parks proposed along the east side of Glenrock Drive. These pocket parks are shown on the attached sketch. The Town of Timnath required pocket parks include the following:

<table>
<thead>
<tr>
<th>Code Required Amenities:</th>
<th>Amenities Provided in Pocket Park #1:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Playground Equipment</td>
<td>Playground Equipment</td>
</tr>
<tr>
<td>Sprinklered Landscaping</td>
<td>Sprinklered Landscaping</td>
</tr>
<tr>
<td></td>
<td>Enhanced landscaping</td>
</tr>
</tbody>
</table>

Pocket Park #1 Description: Pocket Park #1 is the furthest from the neighborhood park and its play area so playground equipment will be provided.
Code Required Amenities: Amenities Provided in Pocket Park #2:
Playground Equipment: Shelter and Benches
Sprinklered Landscaping: Sprinklered Landscaping
Enhanced landscaping

Pocket Park #2 Description: Pocket Park #2 is nearby the neighborhood park so the proposed pocket park will not include play equipment but rather will provide a more quiet setting for adults to have a shade shelter and benches away from the active play areas provided in the other pocket parks and the neighborhood park.

Code Required Amenities: Amenities Provided in Pocket Park #3:
Playground Equipment: Shelter and Benches
Sprinklered Landscaping: Sprinklered Landscaping
Enhanced landscaping

Pocket Park #3 Description: Pocket Park #3 is across the street from the neighborhood park so the proposed pocket park will include a different type of playground equipment such as a climbing boulder which will offer the neighborhood kids an alternative location and play feature from what is proposed in the neighborhood park, benches and enhanced landscaping.

The final design of the pocket parks will be provided to the Town with the revised landscape plans.

Open Space:
The Brunner Farm Subdivision is planned to provide visual or direct access to open space for nearly every lot. The intent is to provide a very open feel making each lot feel a little larger and more separated from nearby lots. The code minimum in Timnath for open space is 20%. The Brunner Farm Subdivision has over 36% of well-integrated open space. The open space provides recreational opportunities and is visibly and physically accessible to the entire neighborhood. Well over 90% of the lots have access to open space. The open spaces are designed to provide various functions. Some of the open spaces are utilized for stormwater conveyance and detention. The open spaces located toward the core of the subdivision are primarily designed to be active irrigated open spaces that are further described above as Pocket Parks and the Neighborhood Park. In addition there is a large open space area that will remain natural with the exception of the Poudre Trail that is located below the bluff, which will accommodate the trail but will also be a valuable visual amenity to the subdivision providing for dramatic river and mountain views.

Trails:
As mentioned above the subdivision is designed to accommodate the Poudre Trail which is a regional trail that will eventually extend from Fort Collins to Greeley. This amenity will be valuable both to the residents of the Brunner Farm but also to all of the residents of Timnath. In addition to the Poudre Trail, there is an extensive network of sidewalks and trails throughout the Brunner Farm that will provide great connectivity for both the residents of the Brunner Farm as well as other Timnath residents. The internal sidewalk and trail network goes above and beyond the minimum standards of connectivity and quality. In addition to connecting to the adjacent neighborhoods and the Poudre Trail the sidewalk and trail network provide great
connectivity to the neighborhood park and the pocket parks. For walking/running there are multiple loops that can create a very dynamic lifestyle for the residents in this part of Timnath.

Nearby Amenities available to Brunner Farm residents:
The residents in Brunner Farm will be a member of the same metropolitan district or a member of a “sister” metropolitan district with identical rights to the amenities within the Timnath Ranch South subdivision. There is an existing neighborhood park and by the time the Brunner Farm subdivision is completed there will be a neighborhood clubhouse and pool available. The clubhouse includes several community amenities including a work-out facility, party rooms, a gathering area etc. There is also a planned larger Town of Timnath neighborhood park on the east side of the Timnath Ranch South subdivision that will be an easy walk from the Brunner Farm subdivision.

16.2.15 Landscape design
The landscape design provides tree lawns with irrigated turf and one tree per 40 linear feet along all street frontages. Landscape for common open space consists of irrigated fescue and non-irrigated low grow native grass. High visibility areas are to be irrigated and will contain clusters of trees. Entries to the subdivision will be enhanced with shrubs, perennials and ornamental grasses and signage.

16.2.17 Fences and walls
The Brunner Farm Subdivision will contain a consistent fence design throughout. Fencing along the outer perimeter of the site (facing Three Bells Parkway and County Road 36) will be a 5’ solid privacy fence with 1 x 6 cedar pickets and 4 x 4 cedar posts. Stone columns are provided at key terminus and corner points. All rear and side lots facing open space will have a 4 foot tall three rail fence with optional wire mesh. These fences will also have stone columns at terminus points and corners.

16.2.18 Residential architecture
The architecture for Brunner Farm Subdivision will continue the high-quality architecture consistent with the other residential homes within the Timnath South development. The builders will follow the model and block diversity as required by the Code.

16.3.6 Density and dimensional standards
All of the lots in Brunner Farm Subdivision meet the specifications outlined in the R-2 zone in Table 3-B. The lots are a minimum of 7,000 square feet. All of the lot widths are a minimum of 54 feet.

16.2.21 Environmental considerations
The development is designed to minimize any disturbance to wetlands, existing vegetation and the ridgeline. Outlot A is intended to remain undisturbed and will continue to function as a wetlands, floodplain and open space. The houses along the ridgeline will be 6’ above and 75’ away from the edge of the river. In addition, we are providing water quality on-site prior to discharging.
16.2.22 Sanitary sewer
This property will petition for inclusion in the South Fort Collins Sanitation District and can physically be served by existing infrastructure in Timnath South and/or the Timnath’s proposed South Town Lateral.

16.2.23 Potable water
This property is currently included in the Fort Collins-Loveland Water District and will be served with potable water by said district. Mains within the County roads surrounding this property will be improved as needed for development of this property.

16.2.24 Non-potable water
This property has access to non-potable water by way of the Akin lateral if said use is desired with development.

16.2.25 Fire Hydrants
Fire hydrants will be spaced as appropriate per Poudre Fire Authority’s regulations.
EXECUTIVE SUMMARY: Preliminary Plat proposal for Brunner Farm Subdivision, a one hundred and five (105) acre low density residential development, zoned R-2 and M-U. The Preliminary Plat proposes subdivision into single family lots with a variety of sizes ranging from 7,000 square feet to lots that will be 1/2 – acre in size, with the existing farmhouse remaining on a one (1) acre lot.

STAFF RECOMMENDATION: Staff recommends the approval of the Preliminary Plat for the aforementioned property, with conditions.

KEY POINTS/SUPPORTING INFORMATION:

Owner: Grant and Gregory Brunner, GL Brunner Farms, LLC and Timnath Holdings, LLC

Applicant: Jim Birdsall, The Birdsall Group

Location: South of and adjacent to CR 36/River Pass Road, and west of and adjacent to Three Bell Parkway

Application Type: Preliminary Plat

Case Number: PP-2013-003

Parcel Size (Acres): Approximately 105.36 acres

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<tr>
<th>Task</th>
<th>Description</th>
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</thead>
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<td>Application Submitted</td>
<td></td>
<td>09/10/13</td>
</tr>
<tr>
<td>Acceptance of Application</td>
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<td>09/10/13</td>
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<tr>
<td>Referral Agency Notification</td>
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<td>09/10/13</td>
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<td>Comments Issued</td>
<td>Comments submitted to applicant on 10/02/13</td>
<td>10/02/13</td>
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<td>Notifications</td>
<td>Notification in Fort Collins Coloradoan</td>
<td>02/13/2014</td>
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<td>Notices mailed to adjacent property owners</td>
<td>02/11/2014</td>
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<tr>
<td>Planning Commission</td>
<td>Public Hearing</td>
<td>02/18/14</td>
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<td>Town Council</td>
<td>Public Hearing</td>
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</table>
SERVICES:

Water: Fort Collins – Loveland Water District
Sewer: South Fort Collins Sanitation District
Fire: Poudre Fire Authority
Special Districts: None

Adjacent Zoning/Land Uses:

<table>
<thead>
<tr>
<th>Direction</th>
<th>Zoning</th>
<th>Land Use</th>
</tr>
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<tbody>
<tr>
<td>North</td>
<td>CR 36; Agricultural (FA-1)</td>
<td>Residential/farming</td>
</tr>
<tr>
<td>South</td>
<td>Agricultural (FA-1)</td>
<td>Residential/farming</td>
</tr>
<tr>
<td>East</td>
<td>C-2 and R-2; Three Bell Parkway</td>
<td>Community Commercial and Residential</td>
</tr>
<tr>
<td>West</td>
<td>Agricultural (FA-1)</td>
<td>Residential/farming</td>
</tr>
</tbody>
</table>

Existing Zoning: FA-1  Proposed Zoning: R-2, Single Family Residential and M-U, Mixed Use
Existing Land Use: Vacant  Proposed Land Use: Single Family Residential

Application Description:
The Brunner Farm Subdivision is intended to create 202 Single Family Lots, ranging in size from .18 to about .5 acres each. The site will have primary access off of CR 36 / River Pass Road and Three Bell Parkway, as well as the continuation of Summerfields Parkway. The proposal includes a neighborhood park, three (3) smaller pocket parks, and a trail network. Outlot A, on the west side of the property, is designed to allow for the Poudre River Trail. This parcel will be conveyed to Larimer County for construction of the trail as the other regional connections are made. The rest of Outlot A and Outlot B (currently tract K) will be maintained by the County as open space. Active and passive recreation areas as well as landscaped water quality areas are included within the development.

Future Approvals/Processes:
1. Final Plat– On Town Council Agenda 02/25/2014

Preliminary Plat Review Criteria.
In addition to all provisions of the Town of Timnath Land Use Code, the Town shall use the following criteria to evaluate the applicant’s request:

1. The preliminary plat represents a functional system of land use and is consistent with the rationale and criteria set forth in the Land Use Code and the Comprehensive Plan.
   The preliminary plat as presented meets this criterion.

2. The application is consistent with the approved sketch plan and incorporates the Planning Commission’s recommendations and conditions of approval.
   This application is consistent with the submitted sketch plan and incorporates the Planning Commission recommendations.

3. The land use mix within the project conforms to Timnath’s Zoning District Map and Land Use Map and furthers the goals and policies of the Comprehensive Plan including:
a. The proposed development promotes the Town’s small town, rural character;
b. Proposed residential development adds diversity to the Town’s housing supply;
c. Proposed commercial development will benefit the Town’s economic base;
d. Parks, open space and trails are incorporated into the site design;
e. The proposed project protects the Town’s environmental quality; and
f. The development enhances cultural, historical, educational and/or human service opportunities.

The submitted preliminary plat meets the applicable criteria.

4. The utility and transportation design is adequate, given existing and planned capacities of those systems.  
This application meets these criteria.

5. Negative impacts on adjacent land uses have been identified and satisfactorily mitigated.
   There are no negative impacts on adjacent land.

6. There is a need or desirability within the community for the applicant’s development and the 
   development will help achieve a balance of land use and/or housing types within Timnath.
   This application meets these criteria.

REFERRAL COMMENTS:
Not returned: AT&T Communications, Poudre School District, Poudre River Public Library District,
Centurylink, Timnath Finance, Timnath Public Works, Xcel Energy, Timnath Town Attorney.
Returned with no comments: Poudre Fire Authority, Fort Collins/Loveland Water District / South Fort Collins Sanitation District, Timnath Police Department, Larimer County Department of Natural Resources.
Returned with comments: Town Planner, Timnath Engineering.

PLANNING COMMISSION RECOMMENDATION:
On 02/18/14 the Planning Commission unanimously recommended approval of this Preliminary Plat to the 
Town Council, with the following conditions:
   a. Prior to approval of the Preliminary Plat by the Timnath Town Council, the property known as the 
      Brunner Farm Annexation is to be annexed and zoned within the Town of Timnath, and the Sketch Plan 
      is to be approved by Town Council
   b. Allow staff to continue to work with applicant to address all unresolved technical comments to the 
      satisfaction of Town Staff and Referral Agencies

RECOMMENDED MOTION:
I move to recommend approval of the Brunner Farm Subdivision Preliminary Plat with the following condition:
   a. Allow staff to continue to work with applicant to address all unresolved technical comments to the 
      satisfaction of Town Staff and Referral Agencies

ATTACHMENTS:
1. Resolution 14, Series 2014
2. Brunner Farm Preliminary Plat
3. Brunner Farm Narrative
4. Current Comment Review Letter
TOWN OF TIMNATH, COLORADO

RESOLUTION NO. 14, SERIES 2014

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF TIMNATH APPROVING THE PRELIMINARY PLAT FOR BRUNNER FARM SUBDIVISION, GENERALLY LOCATED SOUTH OF AND ADJACENT TO CR 36/RIVER PASS ROAD, AND WEST OF AND ADJACENT TO THREE BELL PARKWAY

WHEREAS, Grant and Gregory Brunner, GL Brunner Farms, LLC and Timnath Holdings, LLC (the “Developer”) has submitted a Preliminary Plat for Brunner Farm Subdivision, more particularly described in Exhibit A (legal description) and Exhibit B (Preliminary Plat) and attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, a properly noticed public hearing was held on February 18, 2014, and the above described Preliminary Plat was recommended to the Town Council for approval by the Town of Timnath Planning Commission with the following conditions:

a. Prior to approval of the Preliminary Plat by the Timnath Town Council, the property known as the Brunner Farm Annexation is to be annexed and zoned within the Town of Timnath, and the Sketch Plan is to be approved by Town Council

b. Allow staff to continue to work with applicant to address all unresolved technical comments to the satisfaction of Town Staff and Referral Agencies

WHEREAS, a properly noticed public hearing with the Town Council was held on February 25, 2014 and upon hearing the statements of staff, the applicant(s) and giving consideration to the recommendations, the Town Council determines as provided below.

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO:

Section 1. Preliminary Plat

The Preliminary Plat for Brunner Farm Subdivision is approved as presented with the following condition:

a. Allow staff to continue to work with applicant to address all unresolved technical comments to the satisfaction of Town Staff and Referral Agencies

PASSED, APPROVED AND ADOPTED THIS 25 DAY OF FEBRUARY, 2014.

TOWN OF TIMNATH, COLORADO

__________________________________________
Jill Grossman-Belisle, Mayor
ATTEST:

______________________________
Milissa Peters, Town Clerk
EXHIBIT A

Legal Description of Property

A tract of land located in Section 11, Township 6 North, Range 68 West of the 6th Principal Meridian, Town of Timnath, County of Larimer, State of Colorado and being more particularly described as follows:

Considering the North line of the Northeast Quarter of said Section 11 as bearing North 88°35'19" East with all other bearings herein relative thereto:

COMMENCING at the North Quarter Corner of Section 11; thence along the West line of the Northeast Quarter of Section 11, South 00° 58' 24" West, 30.03 feet to the Point of Beginning, said point being on the South right-of-way line of County Road 36; thence along said South line, North 88° 35' 19" East, 2511.45 feet to the West right-of-way line of County Road 3; thence along said West line, South 00° 34' 57" East, 2495.14 feet; thence, North 77° 19' 47" West, 1304.81 feet to a point on the West line of the Southeast Quarter of the Northeast Quarter; thence along said West line, North 00° 11' 36" East, 692.14 feet; thence, North 23° 51' 18" West, 213.43 feet to a point on the South line of the Northwest Quarter of the Northeast Quarter; thence along said South line, South 88° 48' 49" West, 1201.12 feet to the Center North Sixteenth Corner of Section 11; thence along the West line of the Northeast Quarter of Section 11, North 00° 58' 24" East, 1284.68 feet to the Point of Beginning.

The above described tract of land contains 4,589,386 square feet or 105.358 acres more or less and is subject to all easements and right-of-way now on record or existing.
EXHIBIT B

Preliminary Plat

[attached]
Brunner Farm Subdivision
This request is for subdivision plat for approximately 105.36 acres known as the Brunner Farm Subdivision. There will be total of 202 lots averaging from 7,000 sq. ft. to 27,000 sq. ft. Overall gross density is 1.99 dwelling units per acre. The project has densities that are consistent with the R-2 Zone District Standards and the Land Use Map of the Comprehensive Plan, which is designated as Low Density Residential. The density and location is appropriate for this site.

The Brunner Farm Subdivision is consistent with the following sections of Chapter 16.2 of the Land Use Code:

16.2.1 Vision and intent
The Brunner Farm Subdivision embodies most all of the statements in this section. Notably, the project is walkable and pedestrian oriented. The project provides detached sidewalks throughout the development. In addition an 8’ wide passive trail connection is provided through various greenbelt areas. The 8’ trail provides connections to the neighborhood park as well as to the neighborhoods to the east. The project will also provide an orderly street pattern with tree-lined streets, one and two story buildings, and a safe friendly community. The subdivision is in an appropriate location and is similar in density with the existing surrounding residential developments. Brunner Farm Subdivision provides a neighborhood layout that is intended to be consistent with the surrounding neighborhoods.

16.2.7. Lots and blocks
The lot and block layout of the Brunner Farm Subdivision is consistent with this section. The majority of the streets are gridlike and the lengths of the blocks are appropriate. The lot sizes are appropriate for the R-2 zoning district.

16.2.8. Streets
The street pattern in the Brunner Farm Subdivision consists of local streets in a modified grid pattern, providing connections within the development and to the adjacent existing streets. All of the streets have detached sidewalks, street trees and a greenway, which creates a safe, efficient and attractive experience for both vehicles and pedestrians.

16.2.10 Sidewalks, multi-use pathways and trails
On-street sidewalks are provided throughout the Brunner Farm Subdivision providing linkages within the subdivision and to the surrounding neighborhoods. 8’ wide multi-use trail connections are provided with linkages to the neighborhood park and the public sidewalks along Three Bells Parkway and County Road 36.
Parks and open space

The Brunner Farm subdivision is designed to have great trail and sidewalk connectivity and has an abundance of diverse parks and open spaces, which will provide for a fantastic set of amenities (both within the Brunner Farm subdivision and nearby) for the residents of Brunner Farm. Described below are the various amenities that are available.

Neighborhood Park:
The Brunner Farm provides for a neighborhood park located near the center of the subdivision making it very accessible and an easy walk to all residents within the Brunner Farm. Timnath code requires a 5 acre neighborhood park for all subdivisions that include 200 lots or more. Subdivisions smaller than 200 lots do not require a neighborhood park of any size. The Brunner Farm includes 202 lots. Typically the required neighborhood park would be built and maintained by the Town of Timnath. The park as proposed is smaller than the 5 acre required but provides for amenities that are above and beyond the amenities required by code.

<table>
<thead>
<tr>
<th>Code Required Amenities</th>
<th>Amenities Provided:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Play Areas</td>
<td>Active Play Areas</td>
</tr>
<tr>
<td>Sprinklered Landscaping</td>
<td>Sprinklered Landscaping</td>
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<td></td>
<td>Enhanced Landscaping</td>
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<tr>
<td></td>
<td>Great Lawn Turf play area</td>
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<td></td>
<td>Event Lawn</td>
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<td></td>
<td>Garden Lawn</td>
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<td></td>
<td>Plaza</td>
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<td></td>
<td>Fire Pit</td>
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<tr>
<td></td>
<td>Pavilion</td>
</tr>
<tr>
<td></td>
<td>Benches</td>
</tr>
</tbody>
</table>

This neighborhood park has been presented to the Town of Timnath in conceptual format. The final design of the park will be provided to the Town with the revised landscape plans.

Pocket Parks:
There are 3 pocket parks proposed along the east side of Glenrock Drive. These pocket parks are shown on the attached sketch. The Town of Timnath required pocket parks include the following:

<table>
<thead>
<tr>
<th>Code Required Amenities</th>
<th>Amenities Provided in Pocket Park #1:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Playground Equipment</td>
<td>Playground Equipment</td>
</tr>
<tr>
<td>Sprinklered Landscaping</td>
<td>Sprinklered Landscaping</td>
</tr>
<tr>
<td></td>
<td>Enhanced landscaping</td>
</tr>
</tbody>
</table>

Pocket Park #1 Description: Pocket Park #1 is the furthest from the neighborhood park and its play area so playground equipment will be provided.
Code Required Amenities: Amenities Provided in Pocket Park #2:
Playground Equipment Shelter and Benches
Sprinklered Landscaping Sprinklered Landscaping
Enhanced landscaping

Pocket Park #2 Description: Pocket Park #2 is nearby the neighborhood park so the proposed pocket park will not include play equipment but rather will provide a more quiet setting for adults to have a shade shelter and benches away from the active play areas provided in the other pocket parks and the neighborhood park.

Code Required Amenities: Amenities Provided in Pocket Park #3:
Playground Equipment Shelter and Benches
Sprinklered Landscaping Sprinklered Landscaping
Enhanced landscaping

Pocket Park #3 Description: Pocket Park #3 is across the street from the neighborhood park so the proposed pocket park will include a different type of playground equipment such as a climbing boulder which will offer the neighborhood kids an alternative location and play feature from what is proposed in the neighborhood park, benches and enhanced landscaping.

The final design of the pocket parks will be provided to the Town with the revised landscape plans.

Open Space:
The Brunner Farm Subdivision is planned to provide visual or direct access to open space for nearly every lot. The intent is to provide a very open feel making each lot feel a little larger and more separated from nearby lots. The code minimum in Timnath for open space is 20%. The Brunner Farm Subdivision has over 36% of well-integrated open space. The open space provides recreational opportunities and is visibly and physically accessible to the entire neighborhood. Well over 90% of the lots have access to open space. The open spaces are designed to provide various functions. Some of the opens spaces are utilized for stormwater conveyance and detention. The open spaces located toward the core of the subdivision are primarily designed to be active irrigated open spaces that are further described above as Pocket Parks and the Neighborhood Park. In addition there is a large open space area that will remain natural with the exception of the Poudre Trail that is located below the bluff, which will accommodate the trail but will also be a valuable visual amenity to the subdivision providing for dramatic river and mountain views.

Trails:
As mentioned above the subdivision is designed to accommodate the Poudre Trail which is a regional trail that will eventually extend from Fort Collins to Greeley. This amenity will be valuable both to the residents of the Brunner Farm but also to all of the residents of Timnath. In addition to the Poudre Trail, there is an extensive network of sidewalks and trails throughout the Brunner Farm that will provide great connectivity for both the residents of the Brunner Farm as well as other Timnath residents. The internal sidewalk and trail network goes above and beyond the minimum standards of connectivity and quality. In addition to connecting to the adjacent neighborhoods and the Poudre Trail the sidewalk and trail network provide great...
connectivity to the neighborhood park and the pocket parks. For walking/running there are multiple loops that can create a very dynamic lifestyle for the residents in this part of Timnath.

Nearby Amenities available to Brunner Farm residents:
The residents in Brunner Farm will be a member of the same metropolitan district or a member of a “sister” metropolitan district with identical rights to the amenities within the Timnath Ranch South subdivision. There is an existing neighborhood park and by the time the Brunner Farm subdivision is completed there will be a neighborhood clubhouse and pool available. The clubhouse includes several community amenities including a work-out facility, party rooms, a gathering area etc. There is also a planned larger Town of Timnath neighborhood park on the east side of the Timnath Ranch South subdivision that will be an easy walk from the Brunner Farm subdivision.

16.2.15 Landscape design
The landscape design provides tree lawns with irrigated turf and one tree per 40 linear feet along all street frontages. Landscape for common open space consists of irrigated fescue and non-irrigated low grow native grass. High visibility areas are to be irrigated and will contain clusters of trees. Entries to the subdivision will be enhanced with shrubs, perennials and ornamental grasses and signage.

16.2.17 Fences and walls
The Brunner Farm Subdivision will contain a consistent fence design throughout. Fencing along the outer perimeter of the site (facing Three Bells Parkway and County Road 36) will be a 5’ solid privacy fence with 1 x 6 cedar pickets and 4 x 4 cedar posts. Stone columns are provided at key terminus and corner points. All rear and side lots facing open space will have a 4 foot tall three rail fence with optional wire mesh. These fences will also have stone columns at terminus points and corners.

16.2.18 Residential architecture
The architecture for Brunner Farm Subdivision will continue the high-quality architecture consistent with the other residential homes within the Timnath South development. The builders will follow the model and block diversity as required by the Code.

16.3.6 Density and dimensional standards
All of the lots in Brunner Farm Subdivision meet the specifications outlined in the R-2 zone in Table 3-B. The lots are a minimum of 7,000 square feet. All of the lot widths are a minimum of 54 feet.

16.2.21 Environmental considerations
The development is designed to minimize any disturbance to wetlands, existing vegetation and the ridgeline. Outlot A is intended to remain undisturbed and will continue to function as a wetlands, floodplain and open space. The houses along the ridgeline will be 6’ above and 75’ away from the edge of the river. In addition, we are providing water quality on-site prior to discharging.
16.2.22 Sanitary sewer
This property will petition for inclusion in the South Fort Collins Sanitation District and can physically be served by existing infrastructure in Timnath South and/or the Timnath’s proposed South Town Lateral.

16.2.23 Potable water
This property is currently included in the Fort Collins-Loveland Water District and will be served with potable water by said district. Mains within the County roads surrounding this property will be improved as needed for development of this property.

16.2.24 Non-potable water
This property has access to non-potable water by way of the Akin lateral if said use is desired with development.

16.2.25 Fire Hydrants
Fire hydrants will be spaced as appropriate per Poudre Fire Authority’s regulations.
MEMORANDUM

TO: Jim Birdsall, The Birdsall Group
FROM: Matt Blakely, Town Planner
RE: Brunner Farm Preliminary Plat, Final Plat (PP-2013-003, FP-2013 005)
DATE: February 13, 2014

The following represents the 3rd review of the above application by Staff and the affected referral agencies. The included comments are from all of the agencies that have provided comments. Please provide a point by point response to each of the following comments along with the original comment in a resubmittal to the Town, as well as all provided redlines. Items in red are new/expansion comments; items in blue have yet to be addressed.

The following items must be addressed by the applicant:

**Community Development - (970) 224-3211 x19**

General:

**COMMENT:** Please revise the Sketch Plan rendering to show all the recent updates to the plan.

Landscape:

**COMMENT:** All primary walkways adjacent to the park areas are required to be 8’ in width per code section 16.2.10.B.7

**COMMENT:** Please remove the duplicate park detail sheet 8 as it is the same as 8.0.

Preliminary Plat:

1. **Existing and proposed zoning**
   Please show the zoning boundary for R-2 and M-U up to ROW lines and or property lines where appropriate and indicate acreage. (Please also make this revision to the zoning map associated with the annexation).

   **COMMENT:** Please provide an updated Zoning Map showing these changes.

2. **The long-term function of Outlot A needs to be noted.**

   **COMMENT:** Please update the plans to show Tract K only as the portion containing the storm pipe, and describe it as a blanket utility, drainage, and public access easement, and owned and maintained by the Metro District.
COMMENT: Please revise the dedication statement located on the plans to denote the current “Tract K” parcel as Outlot B, open space to be dedicated to the Town, and owned and maintained by the Town of Timnath.

COMMENT: Revise the dedication statement on the cover page to include Outlot B per previous comment.

7. Please demonstrate compliance with code sections 16.2.12.B.5 and 16.2.12.D.3.a.v, and show how this development complies with the town PROST plan:

COMMENT: Please add a crosswalk at the northwest side of Glenrock intersection.

COMMENT: Please note the easement located within Tract A as a drainage, grading, and public access easement.

COMMENT: The sidewalk along Three Bell Parkway, south of Summerfields Parkway, is required with the phase 1 improvements. It is shown on the landscape plan but needs to be incorporated into the CD set.

Final Plat:

3. The following documents will be required prior to approval:
   a. Subdivision Improvement Agreement (SIA)
   b. Improvement Guarantee Certificate

COMMENT: Ongoing.

Final Construction Plans:

1. New comment: On sheet R-5, please add a 5’ bike lane to the major collector section.

   COMMENT: Not addressed. The cross section does not indicate these changes. Please provide an interim section. Also, the parking should be removed as it is not acceptable with the bike lane width that is proposed.

3. New comment: A crosswalk needs to be provided at the south side of Sienna Dr. for pedestrian connection to the adjacent property as well as a ramp and sidewalk connection on the east side of Three Bell Parkway to connect to the existing sidewalk.

   COMMENT: Crosswalk will need to be shown and approved prior to mylar submittal. This improvement should be shown on the next submittal, along with the other requested changes.

Additional / Referral Agency Comments

*Engineering, Steve Humann, TST Inc. – (970)226-0557*

PENDING

*Poudre Fire Authority, Jim Lynxwiler*

ATTACHED
Fort Collins Loveland Water District, South Fort Collins Sanitation District, Terry Farrill
Approved per Terry Farrill (see attached approval letter).

Documents Required for Resubmittal:
(2) full-size sets and (1) half-size set - Revised Preliminary Plat
(2) full-size sets and (1) half-size set - Revised Final Plat
(2) full-size sets and (1) half-size set - Revised Construction Plans
(2) full-size sets and (1) half-size set - Revised Landscape and Fencing Plans
(2) copies of the Comment Response Letter
(2) copies of an updated Narrative
(2) copies - Documents requested in comments
Digital copies of all revised documents uploaded to Town’s online Box
All provided redlined plan sets

Cc:  Jim Birdsall, TBG (email)
     Mike DiTullio, Westward Development (email)
     Dino DiTullio, Westward Development (email)
     Greg Brunner, GL Brunner Farms LLC (email)
     April Getchius, Town of Timan, Town Manager (email)
     Steve Humann, TST Inc. (email)
     Don Taranto, TST Inc. (email)
     Town File (BF)
Project: BRUNNER FARM PRELIMINARY & FINAL PLAT
Case Number: PP-2013-003, FP-2013-005 – TOWN OF TIMNATH
Description: The Brunner farm is a 108 acre site that is intended to be subdivided into single family lots with a variety of sizes ranging from 7,000 sq. ft. to 1/3 acre. Future zoning will be R-2.

Poudre Fire Authority Comments: January 28, 2014

DEAD-END FIRE LANES
The current phasing plan appears to create an “out of access” concern for PFA in the area of development summarized as Phase 2. Until Phase 4 and 5 are constructed, Phase 2 construction may create dead end fire lanes greater than 660’. For phases 2 to proceed unencumbered, a written proposal for mitigating the potential problem needs to be approved and included in the construction plans. An option may simply be to create a temporary fire lane connecting phases 2 and 4. Further discussion is required.

FCLUC 3.6.2(B) 2006; International Fire Code 503.2.5 and Appendix D: Dead-end fire apparatus access roads cannot exceed 660 feet in length. Dead-end fire access roads in excess of 150 feet in length shall be provided with an approved area for turning around fire apparatus.

Please contact me with any questions.

James Lynxwiler
Poudre Fire Authority
Community Safety Services Division
970-416-2869
January 17, 2014

Mr. Matt Blakely, Town Planner
Town of Timnath
4800 Goodman Street
Timnath, CO 80547

RE: Brunner Farm Subdivision

Dear Mr. Blakely,

The Fort Collins - Loveland Water District and the South Fort Collins Sanitation District have reviewed the above mentioned project and have no further comments. The mylars can be submitted to the District for signature.

Please do not hesitate to contact me at 226-3104, extension 104, if you have any questions or require additional information.

Respectfully,

[Signature]
Mr. Terry W. Farrill, P.E.
District Engineer

xc: Mr. Michael D. DiTullio, District Manager
Timnath Holdings LLC
Ryan O. Banning, P.E., Northern Engineering

EXECUTIVE SUMMARY: Final Plat proposal for Brunner Farm Subdivision, a one hundred and five (105) acre low density residential development, zoned R-2 and M-U. The Final Plat proposes subdivision into single family lots with a variety of sizes ranging from 7,000 square feet to lots that will be 1/2 – acre in size, with the existing farmhouse remaining on a one (1) acre lot.

STAFF RECOMMENDATION: Staff recommends the approval of the Final Plat for the aforementioned property, with conditions.

KEY POINTS/SUPPORTING INFORMATION:

Owner: Grant and Gregory Brunner, GL Brunner Farms, LLC and Timnath Holdings, LLC
Applicant: Jim Birdsall, The Birdsall Group
Location: South of and adjacent to CR 36/River Pass Road, and west of and adjacent to Three Bell Parkway
Application Type: Final Plat
Case Number: FP-2013-005
Parcel Size (Acres): Approximately 105.358

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<th>Task</th>
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<td>09/10/13</td>
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<td>Acceptance of Application</td>
<td></td>
<td>09/10/13</td>
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<tr>
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<td>Comments Issued</td>
<td>Comments submitted to applicant on 10/02/13</td>
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<td>Notification in Fort Collins Coloradoan</td>
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<td></td>
<td>Notices mailed to adjacent property owners</td>
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<td>Planning Commission</td>
<td>Public Hearing</td>
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<td>Town Council</td>
<td>Public Hearing</td>
<td>02/25/14</td>
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SERVICES:

Water: Fort Collins – Loveland Water District
Sewer: South Fort Collins Sanitation District
Fire: Poudre Fire Authority
Special Districts: None

Adjacent Zoning/Land Uses:

<table>
<thead>
<tr>
<th>Direction</th>
<th>Zoning</th>
<th>Land Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>CR 36; Agricultural (FA-1)</td>
<td>Residential/farming</td>
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<tr>
<td>South</td>
<td>Agricultural (FA-1)</td>
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<tr>
<td>East</td>
<td>C-2 and R-2; Three Bell Parkway</td>
<td>Community Commercial and Residential</td>
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<tr>
<td>West</td>
<td>Agricultural (FA-1)</td>
<td>Residential/farming</td>
</tr>
</tbody>
</table>

Existing Zoning: FA-1  Proposed Zoning: R-2, Single Family Residential and M-U, Mixed Use
Existing Land Use: Vacant  Proposed Land Use: Single Family Residential

Application Description:
The Brunner Farm Subdivision is intended to create 202 Single Family Lots, ranging in size from .18 to about .5 acres each. The site will have primary access off of CR 36 / River Pass Road and Three Bell Parkway, as well as the continuation of Summerfields Parkway. The proposal includes a neighborhood park, three (3) smaller pocket parks, and a trail network. Outlot A, on the west side of the property, is designed to allow for the Poudre River Trail. This parcel will be conveyed to Larimer County for construction of the trail as the other regional connections are made. The rest of Outlot A and Outlot B (currently tract K) will be maintained by the County as open space. Active and passive recreation areas as well as landscaped water quality areas are included within the development.

Final Plat Review Criteria:
In addition to all provisions of this Code, the Town shall use the following criteria to evaluate the applicant’s final plat application:

1. The final plat conforms to the approved preliminary plat and incorporates required changes, modifications and conditions attached to the approval of the preliminary plat unless otherwise approved by the Council.
   This final plat is in conformance with the approved Preliminary Plat.

2. The development will substantially comply with the Land Use Code.
   This development substantially complies with the Town of Timnath Municipal Code.

3. All applicable technical standards have been met.
   There are still minor technical comments that need to be addressed (see attached).

Returned with no comments: Poudre Fire Authority, Fort Collins/Loveland Water District / South Fort Collins Sanitation District, Timnath Police Department, Larimer County Department of Natural Resources.
Returned with comments: Town Planner, Timnath Engineering.
**PLANNING COMMISSION RECOMMENDATION:**
On 02/18/14 the Planning Commission unanimously recommended approval of this Final Plat to the Town Council, with the following conditions:

a. Prior to approval of the Final Plat by the Timnath Town Council, the property known as the Brunner Farm Annexation is to be annexed and zoned within the Town of Timnath, and the Sketch Plan and Preliminary Plat are to be approved by Town Council.

b. Allow staff to continue to work with applicant to address all unresolved technical comments to the satisfaction of Town Staff and Referral Agencies

**RECOMMENDED MOTION:**
I move to recommend approval of the Brunner Farm Subdivision Final Plat and Subdivision Improvement Agreement with the following condition:

a. Allow staff to continue to work with applicant to address all unresolved technical comments to the satisfaction of Town Staff and Referral Agencies

**ATTACHMENTS:**
1. Resolution 15, Series 2014
2. Brunner Farm Final Plat
3. Subdivision Improvement Agreement
4. Brunner Farm Narrative
5. Current Comment Review Letter
TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 15, SERIES 2014

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF TIMNATH APPROVING THE FINAL PLAT FOR BRUNNER FARM SUBDIVISION, GENERALLY LOCATED SOUTH OF AND ADJACENT TO CR 36/RIVER PASS ROAD, AND WEST OF AND ADJACENT TO THREE BELL PARKWAY

WHEREAS, Grant and Gregory Brunner, GL Brunner Farms, LLC and Timnath Holdings, LLC (the “Developer”) has submitted a Final Plat for Brunner Farm Subdivision, more particularly described in Exhibit A (legal description) and Exhibit B (Final Plat) and attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, a properly noticed public hearing was held on February 18, 2014, and the above described Final Plat was recommended to Town Council for approval by the Town of Timnath Planning Commission with the following conditions:

a. Prior to approval of the Final Plat by the Timnath Town Council, the property known as the Brunner Farm Annexation is to be annexed and zoned within the Town of Timnath, and the Sketch Plan and Preliminary Plat are to be approved by Town Council.

b. Allow staff to continue to work with applicant to address all unresolved technical comments to the satisfaction of Town Staff and Referral Agencies

WHEREAS, a properly noticed public hearing with the Town Council was held on February 25, 2014 and upon hearing the statements of staff, the applicant(s) and giving consideration to the recommendations, the Town Council determines as provided below; and

WHEREAS, the Town and the Developer wish to enter into a Subdivision Improvement Agreement (SIA) with the passage of this resolution, and is attached as Exhibit C.

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO:

Section 1. Final Plat
The Final Plat for Brunner Farm Subdivision is approved with the following condition:

a. Allow staff to continue to work with applicant to address all unresolved technical comments to the satisfaction of Town Staff and Referral Agencies

Section 2. Subdivision Improvement Agreement
The SIA between the developer and the Town has been prepared and is incorporated herein (Exhibit C) with the following condition:

a) The SIA 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.
PASSED, APPROVED AND ADOPTED THIS 25 DAY OF FEBRUARY, 2014.

TOWN OF TIMNATH, COLORADO

______________________________
Bryan Voronin, Mayor Pro Tem

ATTEST:

______________________________
Milissa Peters, Town Clerk
EXHIBIT A

Legal Description of Property

A tract of land located in Section 11, Township 6 North, Range 68 West of the 6th Principal Meridian, Town of Timnath, County of Larimer, State of Colorado and being more particularly described as follows:

Considering the North line of the Northeast Quarter of said Section 11 as bearing North 88° 35' 19" East with all other bearings herein relative thereto:

COMMENCING at the North Quarter Corner of Section 11; thence along the West line of the Northeast Quarter of Section 11, South 00° 58' 24" West, 30.03 feet to the Point of Beginning, said point being on the South right-of-way line of County Road 36; thence along said South line, North 88° 35' 19" East, 2511.45 feet to the West right-of-way line of County Road 3; thence along said West line, South 00° 34' 57" East, 2495.14 feet; thence, North 77° 19' 47" West, 1304.81 feet to a point on the West line of the Southeast Quarter of the Northeast Quarter; thence along said West line, North 00° 11' 36" East, 692.14 feet; thence, North 23° 51' 18" West, 213.43 feet to a point on the South line of the Northwest Quarter of the Northeast Quarter; thence along said South line, South 88° 48' 49" West, 1201.12 feet to the Center North Sixteenth Corner of Section 11; thence along the West line of the Northeast Quarter of Section 11, North 00° 58' 24" East, 1284.68 feet to the Point of Beginning.

The above described tract of land contains 4,589,386 square feet or 105.358 acres more or less and is subject to all easements and right-of-way now on record or existing.
EXHIBIT B

Final Plat

[attached]
EXHIBIT C

Subdivision Improvement Agreement

[attached]
SUBDIVISION IMPROVEMENT AGREEMENT FOR
BRUNNER FARMS SUBDIVISION

THIS AGREEMENT made as of this 25th day of, February 2014, by and between TOWN OF TIMNATH, COLORADO, a Colorado municipal corporation (the “Town”); and Brunner Farm Holdings, LLC (the “Developer”).

RECITALS

A. Developer is the owner of those certain parcels of that certain real property located in Town of Timnath, as further described in Exhibit A, a copy of which is attached hereto and incorporated herein by reference (the “Property”).

B. The Property was annexed to Town by Ordinance No. 1-2014, adopted on February 25, 2014, and is subject to the terms and conditions of that certain Annexation Agreement for the Brunner Farms Subdivision between the Town and Developer, dated as of February 25, 2014, and recorded against the Property in the Larimer County Real Property Records (collectively, the “Annexation Agreement”).

D. On February 25, 2014, the Board of Trustees of Town of Timnath, after holding all necessary public hearings and having received a recommendation of approval from the Timnath Planning Commission, approved by Resolution No. 15-2014, the final plat and site development plan for the Property the (collectively the approval resolution, final plan, and site development plan are referred to herein as the “Final Plat”).

E. The approval of the final plat and site development plan for the Property are conditioned upon the execution of this Subdivision Improvement Agreement (the “Agreement”), which establishes the obligation of Developer to provide certain public improvements and landscaping necessitated by the proposed development of the Property.

F. Developer acknowledges that the obligations of Developer set forth herein are reasonably attributable to the special impacts which will be generated by the proposed uses of the Property, and that the terms and conditions set forth in this Agreement are necessary, reasonable and appropriate.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions of the Developers covenant to provide Public Improvements, as defined below, for the Property, and the fees to be paid by the Developer associated with additional public infrastructure necessary to support the development of the Property. All conditions contained herein are in addition to the provisions of the
Annexation Agreement, all land use approvals previously granted by Town for the Property, any and all requirements of the Town of Timnath Municipal Code, any and all applicable local, state, and federal law, and any other ordinances of Town of Timnath. The obligations of this Agreement are not intended to supersede any statutory or regulatory requirements referenced in this paragraph.

2. Definitions. Unless this Agreement otherwise clearly indicates, the following words and phrases shall be defined as follows:

A. “Town” shall refer to the Town of Timnath, Colorado, a Municipal Corporation organized pursuant to the laws of the State of Colorado, and shall include Town Manager, or other designee or official, body or agency designated by resolution, ordinance, or statute to act on behalf of Town.

B. “Developer” shall mean Brunner Farm Holdings, LLC, and shall include any agent as authorized by a formal operating agreement, corporate resolution, or similar document, and person acting in accordance with a duly executed and effective power of attorney granting the attorney-in-fact full authority to act in the stead of Developer.

C. “Code” shall refer to the Timnath Municipal Code, including the Land Use Code therein, as it exists on the date of approval of the Final Plat and as it may be amended in the future.

D. “Landscaping” shall refer to the landscaping for the Property shown on the Landscaping Plan attached hereto as Exhibit C, including the cost thereof.

E. “Final Plat” shall have the meaning set forth in the recitals hereto, and shall encompass and shall encompass all conditions included therein.

F. “Final Acceptance” shall have the meaning set forth in Paragraph 13.

G. “Initial Acceptance” shall have the meaning set forth in Paragraph 12.

F. “Phases” shall refer to development of the Property in up to 5 separate phases. Exhibits B-E identifying the Public Improvements and Landscaping, are each separated into the appropriate phase.

G. “Property” shall mean the real property described in the recitals hereto.

H. “Public Improvements” shall have the meaning set forth in Paragraph 5.

I. “Warranty Period” shall have the meaning set forth in Paragraph 12.

3. Agreement and Other Requirements. Developer hereby understands and agrees that the Property is subject to the conditions and requirements of this Agreement, the Annexation Agreement, Final Plat and the zoning for the Property. The Parties agree and acknowledge that the official zoning
map as described in Ordinance No. 2-2014 adopted by the Town on February 25, 2014, and recorded in the Larimer County Real Property Records, reflects the current zoning for the Property. Nothing herein shall relieve Developer of any financial obligation to Town contained in this Agreement or any other agreements to which Developer is a party or pursuant to Town Code.

4. **Fees.** In addition to all fees due pursuant to the Annexation Agreement, and as a condition to any person seeking a building permit for any improvement on the Property, the person seeking such building permit shall be required to pay all fees, charges and costs required by the Code at the time of application for the building permit.

5. **Completion of Public Improvements and Landscaping.** In addition to Public Improvements required within the body of this Agreement, Developer shall also meet all requirements and install all Public Improvements described on Exhibits B-E, attached hereto and incorporated herein by reference. All potable and non-potable waterlines, sewer lines, fire hydrants, potable and non-potable water (if required) or sewer distribution facilities, drainage structures, paved streets, including curbs, sidewalks, gutters and necessary appurtenances, as shown on the Final Plat and the associated construction documents (the “Public Improvements”), and all Landscaping, as approved by Town, shall be installed and completed at the expense of Developer. The Public Improvements required by this Agreement and shown on the Final Plat and associated construction documents are set forth on Exhibits B-E. The costs of these improvements are included in line-item format on Exhibits B-E, as applicable. Developer acknowledges these costs are estimates and the actual costs of such public improvements, upon determination, shall be substituted as the costs on Exhibits B-E. All Public Improvements and Landscaping covered by this Agreement shall be constructed in accordance with the Final Plat and associated plans and construction documents, which shall be approved by the Town and shall be drawn according to the Town’s then-existing regulations and construction standards for such improvements.

6. **Public Improvements to be Managed by Districts.** Developer has included the Property within the Town’s boundaries for the purpose of securing potable water services to the Property to be provided by The Fort Collins-Loveland Water District (the “Water District”), and for the purpose of securing sanitary sewer services to the Property to be provided by The South Fort Collins Sanitation District (the “Sewer District”) (the Water District and Sewer District are collectively referred to as the “Districts”). Developer acknowledges that it is in the Town’s best interest that ongoing potable water and sanitary sewer services and infrastructure are properly coordinated with services and infrastructure to be provided by the Town. Therefore, the Public Improvements, except where specifically provided otherwise, include the facilities to be constructed by the Developer that are required by each of the Districts.

7. **Building Permits.** There shall be no issuance of any building permits by the Town for lots within any defined Phase until all Public Improvements within that Phase including but not limited to streets, curbs, gutters, sidewalks, crossovals, drainage facilities, erosion control, water and wastewater improvements, and street fixtures, but excluding Landscaping and signage, have been granted Initial Acceptance, as defined below, by the Town as provided for in the Code. There shall be no issuance of any occupancy certificates within any Phase until all Public Improvements within that Phase, including Landscaping and signage, have been granted Initial Acceptance by the Town as provided for in the
Code. As a limited exception to the requirements contained in this Paragraph, the Town hereby agrees that up to six (6) building permits for model homes may be issued and outstanding at any given time for the entirety of the Property upon the completion of water and sanitary sewer improvements, which have been approved by all applicable regulatory entities, and completion of an all-weather surface on streets within the applicable Phase of the Property.


A. Completion Security for Public Improvements. To assure the construction, installation, and completion of the Public Improvements in all Phases of the Property, Developer shall, prior to commencing any work on the Property, furnish Town an irrevocable sight draft letter of credit, completion bond, or other security reasonably acceptable to Town ("Completion Security") to secure the completion of Public Improvements required by Town for the applicable Phase of the development. Town shall be designated as a beneficiary of the Completion Security. The Completion Security shall be provided Phase by Phase and shall be in an amount equal to One Hundred Fifteen percent (115%) of the estimated costs of the Public Improvements to be completed within a Phase. The amount of the Completion Security shall not include the portion of the Public Improvements which are to be constructed for the water improvements managed by the Water District or the sanitary sewer improvements managed by the Sewer District. Eighty percent (80%) of the Completion Security related to a component of the Public Improvements within a Phase shall be released upon issuance of a letter of Initial Acceptance by Town engineer issued in accordance herewith. Upon such Initial Acceptance of all of the Public Improvements within a Phase, the Town may release an additional ten percent (10%) of the entire Completion Security for the Phase in the Town’s discretion, resulting in ten percent (10%) of the initial amount of the Completion Security remaining as assurance of performance during the Warranty Period, as defined below, until Final Acceptance, as defined below, of all improvements within the applicable Phase by the Town. The remaining Completion Security shall satisfy Developer’s obligation to provide Warranty Security, as set forth below, until Final Acceptance.

B. Warranty Security. Developer shall warrant any and all Public Improvements for a period of two (2) years from the date Town issues a letter of Initial Acceptance for the applicable Phase that has been constructed. As a condition to issuance of any letter of Initial Acceptance of any Public Improvements, Developer shall provide to Town a warranty bond or other security in a form satisfactory to Town ("Warranty Security"), and in the amount of the remaining Completion Security set forth in paragraph above, to ensure that Public Improvements for which Initial Acceptance has occurred will attain Final Acceptance by Town during the Warranty Period, which Warranty Security will be satisfied by either retention or replacement of the remaining Completion Security. If prior to the issuance of a letter of Final Acceptance, any significant warranty work is required in connection with Public Improvements for which a letter of Initial Acceptance has been issued by Town, Town may require Warranty Security for up to two (2) years from the date of completion of such significant warranty work, provided that the two (2) year period for the remainder of the Public Improvements in such Phase shall not be so extended. In such event, Town shall issue a supplemental letter of Initial Acceptance specifying the Warranty Security required by Town and the work to be completed by Developer prior to issuance of a letter of Final Acceptance for such Public Improvements.
9. **Public Improvement Construction Plan Review.** The plans and construction documents for all Public Improvements shall be drawn according to regulations and construction standards of Town for such improvements. All applicable plans for Public Improvements shall be subject to review and approval by Town to determine if such plans are in general conformance with applicable Town standards. No commencement of construction of Public Improvements shall occur without plan approval by Town. Prior to commencement of construction of any Public Improvement, Developer shall attend a pre-construction meeting with Town engineer to assure compliance of all proposed activities with this Agreement and the Code.

10. **Construction Testing.** Developer, at its sole expense, shall employ a professionally qualified, independent testing company to perform all testing of materials or construction as may be reasonably required by Town to ensure compliance with applicable standards and specifications. All testing companies so employed by Developer shall maintain and have in effect a professional liability insurance policy with policy limits of at least one million dollars ($1,000,000), which will provide coverage for damage sustained by Town which is caused by the professional negligence of such company, its employees or agents in completing such testing and shall provide proof of insurance to Town upon request. Developer shall furnish Town with certified copies of test results and agrees to release and authorize full access to Town and its designated representatives for all work-up materials, procedures and documents used in preparing the test results.

11. **Construction Inspection.** At all times during construction of the Public Improvements and until Final Acceptance thereof by Town, Town shall have the right, but not the duty, to inspect materials and workmanship to ascertain conformance with the approved plans and applicable standards and specifications. Developer shall reasonably cooperate and assist Town in gaining appropriate access to the areas designated for the inspection. It shall be the duty of Developer for a period of two (2) years after Final Acceptance of any Public Improvement to notify Town upon discovery of any nonconformance of such Public Improvement with said plans, standards and specifications. Inspection and acceptance of work by the Town shall not relieve Developer of any responsibility under this Agreement, including but not limited to the obligation to remedy any defect when discovered by Town, regardless of initial or Final Acceptance thereof, if the defect was not easily detectable by Town at the time of initial or Final Acceptance provided that such discovery by Town is within the two-year period referenced above.

12. **Initial Acceptance of Public Improvements.** Upon substantial completion of construction by Developer of the applicable Phase of such Public Improvements, and upon notification thereof to Town by Developer, the Town engineer shall inspect such Public Improvements and certify with specificity their conformity or lack thereof with the applicable specifications. Developer shall make all corrections necessary to bring the Public Improvements into conformity with such specifications. Upon satisfactory completion of the initial inspection and completion of corrections by Developer, and after submission of required documents to Town including written and electronic record plans, Town shall certify Initial Acceptance of the Public Improvements and evidence the same by issuance of letter of Initial Acceptance from Town engineer to Developer specifying in detail the Public Improvements being initially accepted (“**Initial Acceptance**”). Initial Acceptance for any Phase shall be deemed to have occurred upon both the issuance of such letter and receipt of the applicable Warranty.
Security for such Public Improvements. The two (2) year Warranty Period (the “Warranty Period”) for the applicable Phase shall be set forth in the Initial Acceptance letter. The Warranty Period shall commence upon Town’s timely receipt of the required Warranty Security as provided by paragraph 8 hereof. Except as otherwise set forth herein, Initial Acceptance of all Public Improvements by Town for any Phase shall be an express condition to the issuance of any certificates of occupancy for such Phase of the Property for which such Public Improvements are required.

13. **Final Acceptance of Public Improvements.** Upon expiration of the Warranty Period set forth in the Initial Acceptance Letter for Public Improvements for the applicable Phase, Developer shall provide notice to Town engineer that the Public Improvements are ready for final inspection. Upon satisfactory completion of the final inspection, and after conveyance of the Public Improvements as provided herein, and after payment of all fees due Town related to the Property, Town shall certify Final Acceptance of the Public Improvements and evidence the same by issuance of letter of Final Acceptance from Town engineer to Developer specifying in detail the Public Improvements being finally accepted and the Warranty Security for such Phase shall be released ("Final Acceptance"). No letter of Final Acceptance shall be issued without advance approval of Town Council. Absent such consent, Developer shall not be entitled to rely on such letter for any reason. If upon final inspection by Town, significant defects are discovered, Town may elect to issue a supplemental letter of Initial Acceptance (instead of Final Acceptance) specifying corrective work to be completed and additional Warranty Period in accordance with paragraph 8 above. All such corrective work shall be the sole expense of Developer.

14. **Documents Provided to Town Upon Initial Acceptance.** Developer shall provide all necessary engineering designs, surveys, field surveys, and incidental services related to the construction of the Public Improvements, at its sole cost and expense, including reproducible record plan drawings certified accurate by a professional engineer registered in the State of Colorado. Developer shall provide Town and the Districts copies of such record plans drawings in written and electronic format as specified by Town upon Initial Acceptance. As-built drawings shall be required for all Public Improvements constructed by the Developer that will be dedicated to the Town.

15. **Conveyance or Dedication of Improvements.** Except for Public Improvements dedicated to the Water District, Sewer District, or metropolitan districts organized to serve the Property, as applicable, as a condition of Final Acceptance, Developer shall convey to Town all Public Improvements required by the Final Plat for each Phase and, upon request by Town, shall execute such bills of sale as Town may request to assure title thereto is vested in Town notwithstanding the date of construction or Initial Acceptance of such Public Improvements. Acceptance of Public Improvements by dedication on the Final Plat shall not constitute Initial or Final Acceptance of such improvements.

16. **Proof of Ownership.** Prior to the recordation of any plat, a title commitment for the Property shall be provided to Town at the expense of Developer. The title commitment shall show that any portion of the Property to be dedicated to Town, and all property reserved or dedicated for public purposes, is or shall be, free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and payable) which would make the dedications unacceptable as Town determines in its reasonable discretion. A title policy evidenced by the title commitment shall be provided by Developer within thirty (30) days of execution hereof as to any property to be dedicated to Town pursuant to such
Plat in an amount equal to the fair market value of such property. An update to such title commitment shall be provided upon request of Town as a condition of Final Acceptance, with the policy evidenced by such commitment update to be provided thirty (30) days after Final Acceptance. Developer further agrees to provide quitclaim deeds as deemed necessary by the Town in order to facilitate proper categorization of the property for tax assessment purposes by the Larimer County Tax Assessor.

17. Trails. The plans for the Property include trails to be open to the public. Such trails shall be constructed with the Public Improvements of the Property as identified on Exhibits B-E.

18. Improvements to Abutting Streets and Other Offsite Improvements. Exhibits B-E set forth the obligations of Developer for improvement to abutting streets and other offsite improvements necessitated by the development of the Project.

19. Breach by Developer: Town’s Remedies. Should Developer become aware of any actual or anticipated breach of any of the terms and conditions of this Agreement by such Developer, it shall notify Town of such actual or anticipated breach immediately. Should Town become aware of any breach by notice from Developer or otherwise, Town may take such action as permitted or authorized by this Agreement, the Code, or any applicable law, rule or regulation, as Town deems necessary to protect the public health, safety, and welfare; to protect lot buyers and builders; and to protect the citizens of Town from hardship and undue risk. These remedies include, but are not limited to:

A. The refusal to issue any building permit or certificate of occupancy to Developer for any lot(s) platted on the Property;

B. The revocation of any such building permit previously issued to Developer under which construction directly related to such building permit has not commenced;

C. The issuance of a stop work order for any construction related to or impacted by the breach;

D. Any other remedy available at law or in equity.

Unless necessary to protect the immediate health, safety, and welfare, or to protect the interest of Town with regard to security given for the completion of the public improvements, Town shall provide Developer thirty (30) days written notice of its intent to take any action under this paragraph, during which thirty-day period Developer may cure the breach described in the notice and prevent further action by Town; provided, however, if such breach cannot be reasonably cured within such thirty-day period, then Town agrees to reasonably extend such thirty-day period so long as Developer has commenced such cure within such thirty-day period and is diligently pursuing the same to completion. In no event shall the extension of time to cure the breach exceed ninety days.

20. Indemnification. Developer shall indemnify and hold harmless Town, its officers, employees, agents or servants from any and all suits, actions, and claims of every nature and description caused by, arising from or on account of any act or omission of Developer, or of any other person or entity for whose act or omission Developer is liable with respect to construction of the Public
Improvements; and Developer shall pay any and all judgments rendered against Town as the result of any suit, action or claim, together with all reasonable expenses and attorneys fees incurred by Town in defending any such suit, action or claim, excluding only suits, actions and claims arising from Town’s independent gross negligence or intentional malfeasance. Developer shall pay all property taxes on the Property dedicated to Town to the date of conveyance after Final Acceptance, and shall indemnify and hold harmless Town for any property tax liability until such time as the Larimer County Tax Assessor updates its records to reflect said dedication.

21. **Insurance.** Developer shall at all times hereunder have and maintain in full force and effect comprehensive liability insurance providing coverage to such Developer and its employees, providing general liability, and comprehensive automobile liability insurance. Developer shall also require that all its contractors, subcontractors, representatives and agents have and maintain similar coverage, including professional liability, if applicable. Coverage on all policies shall not be less than the minimum amounts per occurrence as set forth in the Colorado Governmental Immunity Act as that Act may from time to time be amended. Additionally, the policies of Developer and each of Developer’s contractors, subcontractors, representatives and agents shall name Town and its agents, officials and employees as additional insureds. Developer shall at all times fully comply with the Colorado Worker’s Compensation Act, and shall use its best reasonable efforts to ensure that each of its contractors and subcontractors are in full compliance with the Act. Prior to, and as a condition of the issuance of any building permits by Town, Developer shall submit certificates of insurance in compliance with the standards set forth above. Nothing herein shall be construed to relieve or discharge Developer of its liability to Town or the Districts under the terms of this Agreement should Developer for any reason fail to procure and maintain any required insurance in sufficient amounts.

22. **Waiver of Defects.** In executing this Agreement, Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of Town to impose conditions on Developer as set forth herein, and concerning the procedure, substance and form of the ordinances or resolutions adopting this Agreement, the Annexation Agreement, or the Final Plat.

23. **Modifications.** This Agreement shall not be amended except by subsequent written agreement of the parties.

24. **Captions.** The captions to this Agreement are inserted only for the purpose of convenient reference, and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

25. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns as the case may be.

26. **Invalid Provision.** If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would
render the provision void, and the other of which render the provision valid, then the provision shall have the meaning which renders it valid.

27. **Governing Law.** The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that exclusive venue for such suit or action shall be in Larimer County, Colorado.

28. **Attorney Fees.** Should this Agreement become the subject of litigation to resolve a claim of default of performance, the prevailing party shall be entitled to recover its reasonable attorney fees, expenses, and court costs.

29. **Notice.** All notice required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address set forth below. Notice may also be given by telefax transmission, and shall be deemed received on the date of such transmission. Either party by notice so given may change the address to which future notices shall be sent.

**Notice to Town:**
Town of Timnath  
4800 Goodman Street  
Timnath, Colorado 80547  
Fax No. (970) 224-3217

**With copy to:**
Town General Counsel  
Gary R. White, Esq.  
White, Bear & Ankele Professional Corporation  
2154 E. Commons Ave, Suite 2000  
Centennial, CO 80122  
Telephone 303-858-1800  
Fax No. 303-858-1802

**Notice to Developer:**
Brunner Farm Holdings, LLC  
Dino or Mike DiTullio  
1927 Wilmington Drive, #101  
Fort Collins, Colorado 80528  
Telephone 303-207-0102  
Fax No. 303-207-0104

30. **Force Majeure.** Whenever a Developer is required to complete construction, repair or replacement of Public Improvements by an agreed deadline, such Developer shall be entitled to an extension of time equal to a delay in completing the foregoing due to unforeseeable causes beyond the control and without the fault or negligence of such Developer, including but not restricted to, acts of God, weather, fires and strikes.
31. **Approvals.** Whenever approval or acceptance of Town is necessary pursuant to any provisions of this Agreement, Town shall act reasonably and in a timely manner in responding to such request for approval or acceptance.

32. **Entire Agreement.** It is expressly understood that Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with documents approved by the Board of Trustees at a public meeting. This Agreement, the Final Plat, and the Annexation Agreement embody the whole agreement of the Parties with respect to the Property. There are no promises, terms, conditions or obligations other than those contained herein, which together supersede all previous communications, representations or agreements, either verbal or written between the Parties hereto. In the event that the Property is subdivided and lots are sold to different individuals in the future, this Agreement may be amended by agreement between the Developer and Town, without consent of such future lot owners to the extent such amendment does not adversely affect such other future lot owners in a material manner as determined in the sole and absolute discretion of Town.

33. **Assignment or Assignments.** There shall be no transfer or assignment of any of the rights or obligations of a Developer under this Agreement without the prior written approval of Town, which approval shall not be unreasonably withheld if the transferee has qualifications and net worth acceptable to Town in its sole discretion and which transferee has assumed the obligations of Developer under this Agreement in writing to the satisfaction of Town. Any attempted assignment or delegation in violation hereof shall be null and void.

34. **Recording of Agreement.** The covenants of this Agreement touch and concern the Property. Therefore, this Agreement shall be promptly recorded in the real estate records of Larimer County and shall be a covenant running with the Property in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

35. **Further Assurances.** The parties shall execute such additional documents and take such additional action as may be necessary to effectuate the intent of this Agreement.

36. **No Duress.** The Parties agree that this Agreement is freely and voluntarily executed by them after extensive negotiations between them and an opportunity for each party to obtain legal advice.

37. **Time is of the Essence.** Time is of the essence for both parties with respect to the obligations herein. The parties agree that they will each act in as expeditious a manner as reasonably possible in performing the obligations herein.

38. **Title and Authority.** Developer expressly warrants and represents to Town that as of the date hereof it is the record owner of all of the property constituting the Property. All the parties represent and warrant, together with the undersigned individual(s), that the undersigned individual(s) have full power and authority to enter into this Subdivision Improvement Agreement. Each party understands that the other parties are relying on such representations and warranties in entering into this Agreement.
39. This Agreement shall be signed concurrently with recordation of the Final Plat.

(Signature page to follow)
WHEREFORE, the parties hereto have executed this Agreement on the day and year first above written.

TOWN OF TIMNATH, COLORADO

Attest:

By: ________________________________          By: ________________________________
   Milissa Peters, Town Clerk          Jill Grossman Belisle, Mayor

Brunner Farm Holdings, LLC

By: ________________________________          By: ________________________________
   Dino DiTullio, Manager

Title: ________________________________
EXHIBIT LIST

The following Exhibits are a part of and incorporated within the Subdivision Improvement Agreement for Brunner Farms Subdivision

EXHIBIT A  Property Description
EXHIBIT B  Public Improvement Schedule By Phase including Costs in Line-Item Format
EXHIBIT C  Landscape Plan By Phase Including Costs In Line-Item Format
EXHIBIT D  Phasing Plan
EXHIBIT E  Trail Plan By Phase
Exhibit A

LEGAL DESCRIPTION:

A tract of land located in Section 11, Township 6 North, Range 68 West of the 6th Principal Meridian, Town of Timnath, County of Larimer, State of Colorado and being more particularly described as follows:

Considering the North line of the Northeast Quarter of said Section 11 as bearing North 88°35'19" East with all other bearings herein relative thereto:

COMMENCING at the North Quarter Corner of Section 11; thence along the West line of the Northeast Quarter of Section 11, South 00° 58' 24" West, 30.03 feet to the Point of Beginning, said point being on the South right-of-way line of County Road 36; thence along said South line, North 88° 35' 19" East, 2511.45 feet to the West right-of-way line of County Road 3; thence along said West line, South 00° 34' 57" East, 2495.14 feet; thence, North 77° 19' 47" West, 1304.81 feet to a point on the West line of the Southeast Quarter of the Northeast Quarter; thence along said West line, North 00° 11' 36" East, 692.14 feet; thence, North 23° 51' 18" West, 213.43 feet to a point on the South line of the Northwest Quarter of the Northeast Quarter; thence along said South line, South 88° 48' 49" West, 1201.12 feet to the Center North Sixteenth Corner of Section 11; thence along the West line of the Northeast Quarter of Section 11, North 00° 58' 24" East, 1284.68 feet to the Point of Beginning.

The above described tract of land contains 4,589,386 square feet or 105.358 acres more or less and is subject to all easements and right-of-way now on record or existing.
EXHIBIT B
Public Improvement Schedule By Phase Including Costs In Line-Item Format
Exhibit B
Public Improvements Schedule by Phase including Costs

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#### Phase 4 Improvements

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</tr>
<tr>
<td>Landscaping</td>
<td>None in this Phase</td>
</tr>
<tr>
<td>Trails</td>
<td>None in this Phase</td>
</tr>
</tbody>
</table>
EXHIBIT C
Landscape Plan by Phase Including Costs in Line-Item Format
EXHIBIT D
Phasing Plan
EXHIBIT E
Trail Plan By Phase
Brunner Farm Subdivision
This request is for subdivision plat for approximately 105.36 acres known as the Brunner Farm Subdivision. There will be total of 202 lots averaging from 7,000 sq. ft. to 27,000 sq. ft. Overall gross density is 1.99 dwelling units per acre. The project has densities that are consistent with the R-2 Zone District Standards and the Land Use Map of the Comprehensive Plan, which is designated as Low Density Residential. The density and location is appropriate for this site.

The Brunner Farm Subdivision is consistent with the following sections of Chapter 16.2 of the Land Use Code:

16.2.1 Vision and intent
The Brunner Farm Subdivision embodies most all of the statements in this section. Notably, the project is walkable and pedestrian oriented. The project provides detached sidewalks throughout the development. In addition an 8’ wide passive trail connection is provided through various greenbelt areas. The 8’ trail provides connections to the neighborhood park as well as to the neighborhoods to the east. The project will also provide an orderly street pattern with tree-lined streets, one and two story buildings, and a safe friendly community. The subdivision is in an appropriate location and is similar in density with the existing surrounding residential developments. Brunner Farm Subdivision provides a neighborhood layout that is intended to be consistent with the surrounding neighborhoods.

16.2.7. Lots and blocks
The lot and block layout of the Brunner Farm Subdivision is consistent with this section. The majority of the streets are gridlike and the lengths of the blocks are appropriate. The lot sizes are appropriate for the R-2 zoning district.

16.2.8. Streets
The street pattern in the Brunner Farm Subdivision consists of local streets in a modified grid pattern, providing connections within the development and to the adjacent existing streets. All of the streets have detached sidewalks, street trees and a greenway, which creates a safe, efficient and attractive experience for both vehicles and pedestrians.

16.2.10 Sidewalks, multi-use pathways and trails
On-street sidewalks are provided throughout the Brunner Farm Subdivision providing linkages within the subdivision and to the surrounding neighborhoods. 8’ wide multi-use trail connections are provided with linkages to the neighborhood park and the public sidewalks along Three Bells Parkway and County Road 36.
16.2.12 Parks and open space

The Brunner Farm subdivision is designed to have great trail and sidewalk connectivity and has an abundance of diverse parks and open spaces, which will provide for a fantastic set of amenities (both within the Brunner Farm subdivision and nearby) for the residents of Brunner Farm. Described below are the various amenities that are available.

Neighborhood Park:
The Brunner Farm provides for a neighborhood park located near the center of the subdivision making it very accessible and an easy walk to all residents within the Brunner Farm. Timnath code requires a 5 acre neighborhood park for all subdivisions that include 200 lots or more. Subdivisions smaller than 200 lots do not require a neighborhood park of any size. The Brunner Farm includes 202 lots. Typically the required neighborhood park would be built and maintained by the Town of Timnath. The park as proposed is smaller than the 5 acre required but provides for amenities that are above and beyond the amenities required by code.

<table>
<thead>
<tr>
<th>Code Required Amenities</th>
<th>Amenities Provided:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Play Areas</td>
<td>Active Play Areas</td>
</tr>
<tr>
<td>Sprinklered Landscaping</td>
<td>Sprinklered Landscaping</td>
</tr>
<tr>
<td></td>
<td>Enhanced Landscaping</td>
</tr>
<tr>
<td></td>
<td>Great Lawn Turf play area</td>
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<tr>
<td></td>
<td>Event Lawn</td>
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<td></td>
<td>Garden Lawn</td>
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<tr>
<td></td>
<td>Plaza</td>
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<tr>
<td></td>
<td>Fire Pit</td>
</tr>
<tr>
<td></td>
<td>Pavilion</td>
</tr>
<tr>
<td></td>
<td>Benches</td>
</tr>
</tbody>
</table>

This neighborhood park has been presented to the Town of Timnath in conceptual format. The final design of the park will be provided to the Town with the revised landscape plans.

Pocket Parks:
There are 3 pocket parks proposed along the east side of Glenrock Drive. These pocket parks are shown on the attached sketch. The Town of Timnath required pocket parks include the following:

<table>
<thead>
<tr>
<th>Code Required Amenities</th>
<th>Amenities Provided in Pocket Park #1:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Playground Equipment</td>
<td>Playground Equipment</td>
</tr>
<tr>
<td>Sprinklered Landscaping</td>
<td>Sprinklered Landscaping</td>
</tr>
<tr>
<td></td>
<td>Enhanced landscaping</td>
</tr>
</tbody>
</table>

Pocket Park #1 Description: Pocket Park #1 is the furthest from the neighborhood park and its play area so playground equipment will be provided.
Code Required Amenities: Amenities Provided in Pocket Park #2:
Playground Equipment Shelter and Benches
Sprinklered Landscaping Sprinklered Landscaping
Enhanced landscaping
Pocket Park #2 Description: Pocket Park #2 is nearby the neighborhood park so the proposed pocket park will not include play equipment but rather will provide a more quiet setting for adults to have a shade shelter and benches away from the active play areas provided in the other pocket parks and the neighborhood park.

Code Required Amenities: Amenities Provided in Pocket Park #3:
Playground Equipment Shelter and Benches
Sprinklered Landscaping Sprinklered Landscaping
Enhanced landscaping
Pocket Park #3 Description: Pocket Park #3 is across the street from the neighborhood park so the proposed pocket park will include a different type of playground equipment such as a climbing boulder which will offer the neighborhood kids an alternative location and play feature from what is proposed in the neighborhood park, benches and enhanced landscaping.

The final design of the pocket parks will be provided to the Town with the revised landscape plans.

Open Space:
The Brunner Farm Subdivision is planned to provide visual or direct access to open space for nearly every lot. The intent is to provide a very open feel making each lot feel a little larger and more separated from nearby lots. The code minimum in Timnath for open space is 20%. The Brunner Farm Subdivision has over 36% of well-integrated open space. The open space provides recreational opportunities and is visibly and physically accessible to the entire neighborhood. Well over 90% of the lots have access to open space. The open spaces are designed to provide various functions. Some of the opens spaces are utilized for stormwater conveyance and detention. The open spaces located toward the core of the subdivision are primarily designed to be active irrigated open spaces that are further described above as Pocket Parks and the Neighborhood Park. In addition there is a large open space area that will remain natural with the exception of the Poudre Trail that is located below the bluff, which will accommodate the trail but will also be a valuable visual amenity to the subdivision providing for dramatic river and mountain views.

Trails:
As mentioned above the subdivision is designed to accommodate the Poudre Trail which is a regional trail that will eventually extend from Fort Collins to Greeley. This amenity will be valuable both to the residents of the Brunner Farm but also to all of the residents of Timnath. In addition to the Poudre Trail, there is an extensive network of sidewalks and trails throughout the Brunner Farm that will provide great connectivity for both the residents of the Brunner Farm as well as other Timnath residents. The internal sidewalk and trail network goes above and beyond the minimum standards of connectivity and quality. In addition to connecting to the adjacent neighborhoods and the Poudre Trail the sidewalk and trail network provide great
connectivity to the neighborhood park and the pocket parks. For walking/running there are multiple loops that can create a very dynamic lifestyle for the residents in this part of Timnath.

Nearby Amenities available to Brunner Farm residents:
The residents in Brunner Farm will be a member of the same metropolitan district or a member of a “sister” metropolitan district with identical rights to the amenities within the Timnath Ranch South subdivision. There is an existing neighborhood park and by the time the Brunner Farm subdivision is completed there will be a neighborhood clubhouse and pool available. The clubhouse includes several community amenities including a work-out facility, party rooms, a gathering area etc. There is also a planned larger Town of Timnath neighborhood park on the east side of the Timnath Ranch South subdivision that will be an easy walk from the Brunner Farm subdivision.

16.2.15 Landscape design
The landscape design provides tree lawns with irrigated turf and one tree per 40 linear feet along all street frontages. Landscape for common open space consists of irrigated fescue and non-irrigated low grow native grass. High visibility areas are to be irrigated and will contain clusters of trees. Entries to the subdivision will be enhanced with shrubs, perennials and ornamental grasses and signage.

16.2.17 Fences and walls
The Brunner Farm Subdivision will contain a consistent fence design throughout. Fencing along the outer perimeter of the site (facing Three Bells Parkway and County Road 36) will be a 5’ solid privacy fence with 1 x 6 cedar pickets and 4 x 4 cedar posts. Stone columns are provided at key terminus and corner points. All rear and side lots facing open space will have a 4 foot tall three rail fence with optional wire mesh. These fences will also have stone columns at terminus points and corners.

16.2.18 Residential architecture
The architecture for Brunner Farm Subdivision will continue the high-quality architecture consistent with the other residential homes within the Timnath South development. The builders will follow the model and block diversity as required by the Code.

16.3.6 Density and dimensional standards
All of the lots in Brunner Farm Subdivision meet the specifications outlined in the R-2 zone in Table 3-B. The lots are a minimum of 7,000 square feet. All of the lot widths are a minimum of 54 feet.

16.2.21 Environmental considerations
The development is designed to minimize any disturbance to wetlands, existing vegetation and the ridgeline. Outlot A is intended to remain undisturbed and will continue to function as a wetlands, floodplain and open space. The houses along the ridgeline will be 6’ above and 75’ away from the edge of the river. In addition, we are providing water quality on-site prior to discharging.
16.2.22 Sanitary sewer
This property will petition for inclusion in the South Fort Collins Sanitation District and can physically
be served by existing infrastructure in Timnath South and/or the Timnath’s proposed South Town
Lateral.

16.2.23 Potable water
This property is currently included in the Fort Collins-Loveland Water District and will be served with
potable water by said district. Mains within the County roads surrounding this property will be
improved as needed for development of this property.

16.2.24 Non-potable water
This property has access to non-potable water by way of the Akin lateral if said use is desired with
development.

16.2.25 Fire Hydrants
Fire hydrants will be spaced as appropriate per Poudre Fire Authority’s regulations.
MEMORANDUM

TO: Jim Birdsall, The Birdsall Group
FROM: Matt Blakely, Town Planner
RE: Brunner Farm Preliminary Plat, Final Plat (PP-2013-003, FP-2013 005)
DATE: February 13, 2014

The following represents the 3rd review of the above application by Staff and the affected referral agencies. The included comments are from all of the agencies that have provided comments. Please provide a point by point response to each of the following comments along with the original comment in a resubmittal to the Town, as well as all provided redlines. Items in red are new/expansion comments; items in blue have yet to be addressed.

The following items must be addressed by the applicant:

Community Development - (970) 224-3211 x19

General:

COMMENT: Please revise the Sketch Plan rendering to show all the recent updates to the plan.

Landscape:

COMMENT: All primary walkways adjacent to the park areas are required to be 8’ in width per code section 16.2.10.B.7

COMMENT: Please remove the duplicate park detail sheet 8 as it is the same as 8.0.

Preliminary Plat:

i. Existing and proposed zoning
Please show the zoning boundary for R-2 and M-U up to ROW lines and or property lines where appropriate and indicate acreage. (Please also make this revision to the zoning map associated with the annexation).

COMMENT: Please provide an updated Zoning Map showing these changes.

2. The long-term function of Outlot A needs to be noted.

COMMENT: Please update the plans to show Tract K only as the portion containing the storm pipe, and describe it as a blanket utility, drainage, and public access easement, and owned and maintained by the Metro District.
COMMENT: Please revise the dedication statement located on the plans to denote the current “Tract K” parcel as Outlot B, open space to be dedicated to the Town, and owned and maintained by the Town of Timnath.

COMMENT: Revise the dedication statement on the cover page to include Outlot B per previous comment.

7. Please demonstrate compliance with code sections 16.2.12.B.5 and 16.2.12.D.3.a.v, and show how this development complies with the town PROST plan:

COMMENT: Please add a crosswalk at the northwest side of Glenrock intersection.

COMMENT: Please note the easement located within Tract A as a drainage, grading, and public access easement.

COMMENT: The sidewalk along Three Bell Parkway, south of Summerfields Parkway, is required with the phase 1 improvements. It is shown on the landscape plan but needs to be incorporated into the CD set.

Final Plat:

3. The following documents will be required prior to approval:
   a. Subdivision Improvement Agreement (SIA)
   b. Improvement Guarantee Certificate

COMMENT: Ongoing.

Final Construction Plans:

1. New comment: On sheet R-5, please add a 5’ bike lane to the major collector section.

   COMMENT: Not addressed. The cross section does not indicate these changes. Please provide an interim section. Also, the parking should be removed as it is not acceptable with the bike lane width that is proposed.

3. New comment: A crosswalk needs to be provided at the south side of Sienna Dr. for pedestrian connection to the adjacent property as well as a ramp and sidewalk connection on the east side of Three Bell Parkway to connect to the existing sidewalk.

   COMMENT: Crosswalk will need to be shown and approved prior to mylar submittal. This improvement should be shown on the next submittal, along with the other requested changes.

Additional / Referral Agency Comments

Engineering, Steve Humann, TST Inc. – (970)226-0557
PENDING

Poudre Fire Authority, Jim Lynxwiler
ATTACHED
Fort Collins Loveland Water District, South Fort Collins Sanitation District, Terry Farrill
Approved per Terry Farrill (see attached approval letter).

Documents Required for Resubmittal:
(2) full-size sets and (1) half-size set - Revised Preliminary Plat
(2) full-size sets and (1) half-size set - Revised Final Plat
(2) full-size sets and (1) half-size set - Revised Construction Plans
(2) full-size sets and (1) half-size set - Revised Landscape and Fencing Plans
(2) copies of the Comment Response Letter
(2) copies of an updated Narrative
(2) copies - Documents requested in comments
Digital copies of all revised documents uploaded to Town’s online Box
All provided redlined plan sets

Cc: Jim Birdsall, TBG (email)
    Mike DiTullio, Westward Development (email)
    Dino DiTullio, Westward Development (email)
    Greg Brunner, GL Brunner Farms LLC (email)
    April Getchius, Town of Timanthy, Town Manager (email)
    Steve Humann, TST Inc. (email)
    Don Taranto, TST Inc. (email)
    Town File (BF)
Project: BRUNNER FARM PRELIMINARY & FINAL PLAT  
Case Number: PP-2013-003, FP-2013-005 – TOWN OF TIMNATH  
Description: The Brunner farm is a 108 acre site that is intended to be subdivided into single family lots with a variety of sizes ranging from 7,000 sq. ft. to 1/3 acre. Future zoning will be R-2.

Poudre Fire Authority Comments: January 28, 2014

DEAD-END FIRE LANES
The current phasing plan appears to create an “out of access” concern for PFA in the area of development summarized as Phase 2. Until Phase 4 and 5 are constructed, Phase 2 construction may create dead end fire lanes greater than 660’. For phases 2 to proceed unencumbered, a written proposal for mitigating the potential problem needs to be approved and included in the construction plans. An option may simply be to create a temporary fire lane connecting phases 2 and 4. Further discussion is required.

FCLU 3.6.2(B) 2006: International Fire Code 503.2.5 and Appendix D: Dead-end fire apparatus access roads cannot exceed 660 feet in length. Dead-end fire access roads in excess of 150 feet in length shall be provided with an approved area for turning around fire apparatus.

Please contact me with any questions.

James Lynxwiler  
Poudre Fire Authority  
Community Safety Services Division  
970-416-2869
January 17, 2014

Mr. Matt Blakely, Town Planner
Town of Timnath
4800 Goodman Street
Timnath, CO 80547

RE: Brunner Farm Subdivision

Dear Mr. Blakely,

The Fort Collins - Loveland Water District and the South Fort Collins Sanitation District have reviewed the above mentioned project and have no further comments. The mylars can be submitted to the District for signature.

Please do not hesitate to contact me at 226-3104, extension 104, if you have any questions or require additional information.

Respectfully,

[Signature]

Mr. Terry W. Farrill, P.E.
District Engineer

xc: Mr. Michael D. DiTullio, District Manager
Timnath Holdings LLC
Ryan O. Banning, P.E., Northern Engineering
TOWN COUNCIL COMMUNICATION

Meeting Date: 02/25/2014
Presented By: Matt Blakely

Item: RESOLUTION 16, SERIES 2014, A RESOLUTION SUPPORTING THE GRANT APPLICATION FOR A FISHING IS FUN GRANT FROM THE COLORADO DEPARTMENT OF PARKS AND WILDLIFE FOR FISHING RELATED AND PARK IMPROVEMENTS TO THE GATEWAY PARK POND

EXECUTIVE SUMMARY: Staff will be submitting for a Fishing is Fun Grant through the Colorado Parks and Wildlife (CPW) Department. The grant application is due by March 5th, 2014, and will include a budgetary analysis as well as preliminary design documents.

STAFF RECOMMENDATION: Staff recommends the approval of the resolution regarding the Fishing is Fun grant application for the Gateway Park Pond.

KEY POINTS/SUPPORTING INFORMATION:
Owner: Town of Timnath and Lower Poudre Augmentation Company
Applicant: Town of Timnath
Location: North of and adjacent to Harmony Road, east of and adjacent to Weitzel Street, and west of and adjacent to the Poudre River and Poudre River Trail.

Process Schedule

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<thead>
<tr>
<th>Task</th>
<th>Description</th>
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<tbody>
<tr>
<td>Resolution</td>
<td>Town Council action on Resolution</td>
<td>02/25/2014</td>
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<tr>
<td>Application Submitted</td>
<td>Grant application to the CPW</td>
<td>03/05/2014</td>
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<tr>
<td>Application Review</td>
<td>Review by CPW</td>
<td>03/2014</td>
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<tr>
<td>Preliminary Approval</td>
<td>Potential Regional approval and ranking</td>
<td>04/10/2014</td>
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<tr>
<td>Notification of Presentation</td>
<td>Potential Presentation to panel date set</td>
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<tr>
<td>Presentation</td>
<td>Potential Presentation to Panel and ranking and review</td>
<td>05/06/2014</td>
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<tr>
<td>Approval of Application</td>
<td>Potential Conditional approval</td>
<td>06/2014</td>
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<tr>
<td>Environmental Compliance</td>
<td>Potential Review of NEPA, 404 permit, other compliance issues</td>
<td>06/2014 through 03/2015</td>
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<tr>
<td>Notice to Proceed</td>
<td>Potential Notification of approval and notice to proceed</td>
<td>By 04/2015</td>
</tr>
<tr>
<td>Completion Deadline</td>
<td>Project completion deadline</td>
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**Adjacent Zoning/Land Uses:**

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<th>Direction</th>
<th>Zoning</th>
<th>Land Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>(FA-1)</td>
<td>City of Fort Collins Trail/Poudre River</td>
</tr>
<tr>
<td>South</td>
<td>Harmony Road/Costco</td>
<td>Major Arterial/Community Commercial</td>
</tr>
<tr>
<td>East</td>
<td>Varied</td>
<td>Single Family Residential</td>
</tr>
<tr>
<td>West</td>
<td>C-2</td>
<td>Community Commercial/Wal-mart</td>
</tr>
</tbody>
</table>

**Existing Zoning:** A  **Proposed Zoning:** Unchanged  
**Existing Land Use:** Irrigation Pond  **Proposed Land Use:** Fishing Pond/park

**Application Description:**  
The purpose of the grant is to seek contributions toward creating angling related improvements adjacent to the Wal-mart pond (hereby referred to as the Gateway Park Pond). Funds will be used toward the construction of several park and fishing amenities, such as picnic areas, shade shelters, ADA accessible fishing areas and piers, and other amenities such as landscaping and parking. The CPW may contribute up to 75% of the total project costs, though typically their contribution averages 60% up to $400,000. Town Staff has tentatively estimated the improvements to range from $175,000 to $200,000. This will establish a new and unique angling opportunity within the Town of Timnath, and will be used by residents and visitors.

Separate from the Fishing is Fun Grant, the CPW will begin stocking the pond with a variety of fish species, and will be actively managed by the CPW to ensure sustainability. The Town and CPW will also evaluate possible restrictions such as bagging limits, size limitations, and pertinent regulations. The Town of Timnath has a lease agreement with the Lower Poudre Augmentation Company that allows for the use and improvement of the ground and surface rights to the reservoir for boating, fishing, and other related activities.

**ADVANTAGES:**  
- Leverages tax dollars and allows for more substantial capital improvements  
- Support from CPW with regard to stocking and long-term sustainability of pond  
- Unique opportunity to create a long-term angling opportunity within the Town of Timnath

**DISADVANTAGES:**  
- Conformance to CPW approval schedule and timeline

**FINANCIAL IMPACT:**  
- Commitment by the Town of staff time, as well as revenues to construct and maintain the pond and park area

**RECOMMENDED MOTION:**  
I move to recommend approval of Resolution 16, Series 2014, A resolution supporting the Grant Application for a Fishing is Fun Grant from the Colorado Parks and Wildlife Department for fishing related improvements to the Gateway Park Pond.

**ATTACHMENTS:**  
1. Resolution 16, Series 2014
A RESOLUTION SUPPORTING THE GRANT APPLICATION FOR A FISHING IS FUN GRANT FROM THE COLORADO DEPARTMENT OF PARKS AND WILDLIFE FOR FISHING RELATED AND PARK IMPROVEMENTS TO THE GATEWAY PARK POND

WHEREAS, the Town of Timnath staff is interested in seeking a grant from the Colorado Parks and Wildlife Department for improvements to the Gateway Pond and Park area, and;

WHEREAS, the Town of Timnath is requesting between $120,000 and $150,000 from Colorado Parks and Wildlife to construct improvements to the Gateway Park and Pond, and the Town would be responsible for $50,000 to $80,000 on a reimbursement basis depending on the scope of the improvements, and;

WHEREAS, If the grant is awarded, the Town of Timnath supports the completion of the project.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH THAT:

Section 1: The Town Council of the Town of Timnath supports the application to Colorado Parks and Wildlife for the Fishing is Fun Grant.

Section 2: If the grant is awarded, the Town Council of the Town of Timnath supports the completion of the project.

Section 3: The Town Council of the Town of Timnath acknowledges that the grant application includes matching funds which the Town of Timnath is solely responsible to provide if a grant is awarded.

Section 4: The Town Council of the Town of Timnath will appropriate those matching funds and authorizes the expenditure of funds necessary to meet the terms and obligations of any grant awarded.

Section 5: If the grant is awarded, the Town Council hereby authorizes the Town Manager to sign the grant agreement with Colorado Parks and Wildlife.

Section 6: This resolution to be in full force and effect from and after its passage and approval.
ADOPTED AND APPROVED THIS 25 DAY OF FEBRUARY, 2014.

TOWN OF TIMNATH

By: ________________________________
    Jill Grossman-Belisle, Mayor

ATTEST:

_____________________________
Milissa Peters, Town Clerk
<table>
<thead>
<tr>
<th>Meeting Date: 2/25/14</th>
<th>Item: A Resolution Approving An Agreement with the Box Elder Ditch Company</th>
<th>Ordinance □ Resolution ✓ Discussion □ For Information □</th>
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</thead>
<tbody>
<tr>
<td>Presented by:</td>
<td></td>
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<tr>
<td>April D. Getchius, AICP Town Manager</td>
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**EXECUTIVE SUMMARY:** The development of the Cache La Poudre property located at Harmony and Weitzel Roads requires the relocation of the Box Elder Ditch on the site. As a part of this relocation, the Ditch Company is requiring the Town to maintain the relocated ditch structure.

**STAFF RECOMMENDATION:** Staff recommends approval of the attached agreement.

**KEY POINTS/SUPPORTING INFORMATION:**
- The Box Elder Ditch Company owns and operates the drainage utility through the subject site.
- The ditch will be rerouted as part of the on-site improvements for the development of the subject property.
- The ditch will be reconstructed out of concrete and will include a grated cover.
- Maintenance expense is expected to be minimal as a result of the new construction and design.

**ADVANTAGES:** Agreeing to the ongoing maintenance of the new, concrete ditch will allow for its relocation and the development of the site.

**DISADVANTAGES:** The Town will be responsible for the maintenance over the long term.

**FINANCIAL IMPACT:** Fiscal impact is expected to be minimal because of the high end construction of the ditch.

**RECOMMENDED MOTION:** I move approval of Resolution No. 17, Series 2014 entitled “A Resolution Approving a Ditch Maintenance Agreement with the Box Elder Ditch Company.”

**ATTACHMENTS:**
1. Resolution.
2. Agreement.
A RESOLUTION APPROVING A DITCH MAINTENANCE AGREEMENT WITH THE BOX ELDER DITCH COMPANY

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

WHEREAS, Council policy is that material agreements and other documents requiring formal Council approval should be approved by resolution; and

WHEREAS, it is required that the Box Elder Ditch be relocated; and

WHEREAS, the Town has agreed to maintain the relocated ditch; and

WHEREAS, an agreement with the Box Elder Ditch Company is attached.

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

Section 1. Repeal

The Town Council hereby approves the Agreement or Document and authorizes its execution by the Mayor, Manager, or other person authorized by Council adopted resolution or the Charter to sign Agreements or Documents.


TOWN OF TIMNATH, COLORADO

______________________________
Bryan Voronin, Mayor Pro Tem

ATTEST:

______________________________
Milissa Peters, Town Clerk
DITCH MAINTENANCE AGREEMENT

THIS DITCH MAINTENANCE AGREEMENT (this “Maintenance Agreement”) is made and entered into on this _____ day of __________, 2014, by and among the TOWN OF TIMNATH, COLORADO, an incorporated Colorado municipality (“Town”) and THE BOX ELDER DITCH COMPANY, a Colorado mutual ditch corporation (the “Ditch Company”) (together referred to as the “Parties”).

WHEREAS, Ditch Company is the operator of a canal or ditch commonly known as the Box Elder Ditch. In accordance with pending development plans, the portions of the Box Elder Ditch located within the Town will be realigned to that certain location more particularly described on Exhibit A attached hereto (the “Ditch”).

WHEREAS, upon completion of the improvements finalizing the realignment of Ditch and the Ditch Company’s acceptance of the same (“Realignment Project Acceptance”) in accordance with that certain Ditch Relocation Easement by and between the Ditch Company and Cache La Poudre Investors South, LLC (the “Relocation Easement”), the Town has agreed to provide on-going maintenance of the Ditch in accordance with the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows.

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated in and made a part of the Maintenance Agreement of the Parties.

2. Maintenance and Repairs. Upon Realignment Project Acceptance, the Town shall be responsible for any and all maintenance and repair of the Realigned Ditch and shall conduct such maintenance functions in accordance with best practices, except the Town shall have no responsibility to conduct any maintenance or repair is caused by the gross negligence or wanton and willful misconduct of the Ditch Company. The Town’s maintenance and repair of the Ditch shall be in compliance with the terms and conditions of the Relocation Easement. Should the Town fail to maintain the Ditch after five days written notice from the Ditch Company of an issue needing correction, except in the case of any emergency in which no notice shall be required, then the Ditch Company shall perform or cause to be performed such repair and maintenance of said land and invoice the Town for reimbursement of the actual, reasonable, costs and expenses of such repair and/or maintenance. The Company shall be wholly without liability to the Town for damages resulting from the reasonable actions of the Company in the performance of said repairs and/or maintenance to the Ditch, except as to such damage as may be caused by gross negligence or wanton and willful misconduct of the Company.

3. Notice. Any notice required or desired to be given by any party to this Agreement shall be in writing and may be personally delivered; sent by certified mail, return receipt requested; or sent by a nationally recognized receipted overnight delivery service, including the United States Postal Service, United Parcel Service, Federal Express, or Airborne Express, for earliest delivery the next day. Any such notice shall be deemed to have been given and received as follows: when personally delivered
to the party to whom it is addressed; when mailed, three delivery (3) days after deposit with the United States Postal Service, postage prepaid; and when by overnight delivery service, one (1) day after deposit in the custody of the delivery service. The addresses for the mailing or delivering of notices shall be as follows:

If to the Town:          Town of Timnath
                        4800 Goodman Street
                        Timnath, Colorado 80547
                        Attention: April Getchius

With a copy to:         White, Bear, Ankele, Tanaka, & Waldron, P.C.
                        2154 E. Commons Avenue, Suite 2000
                        Centennial, Colorado 80122
                        Attn: Gary White

If to Ditch Company:    The Box Elder Ditch Company
                        c/o Fischer, Brown, Bartlett & Gunn, P.C.
                        Attn: Brent Bartlett
                        1319 Prospect Road
                        Fort Collins, CO 80525

4. Assignment. This Maintenance Agreement may not be assigned, in whole or part, by any party hereto without the express written consent of the other parties hereto, which consent may be granted or withheld in the sole discretion of any such party.

5. No Third Party Beneficiaries. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a Party to this Agreement.

6. Sections and Headings. Sections and headings herein contained are for organization purpose only and shall not affect the interpretation of this Agreement.

7. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

[The remainder of this page is intentionally blank.]
IN WITNESSETH WHEREOF, the parties hereto have executed this Maintenance Agreement on the day and year of the last signature below set forth.

TOWN OF TIMNATH, COLORADO

By: __________________________
   , Mayor

Date: _______________________

ATTEST:

________________________________
Town Clerk

THE BOX ELDER DITCH COMPANY, a Colorado mutual ditch corporation

By: __________________________
   Don Kehn, President

Date: _________________________
TOWN OF TIMNATH, COLORADO

RESOLUTION NO. 18, SERIES 2014

A RESOLUTION APPROVING THE AMENDED AND RESTATED COOPERATION AGREEMENT BETWEEN THE TOWN OF TIMNATH AND THE TIMNATH DEVELOPMENT 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, attached hereto as Exhibit A is the Amended and Restated Cooperation Agreement between the Town of Timnath, Colorado and the Timnath Development Authority (the "Agreement"); 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 FEBRUARY 25, 2014,

TOWN OF TIMNATH, COLORADO

________________________________________
Bryan Voronin, Mayor Pro Tem

ATTEST:

________________________________________
Milissa Peters, Town Clerk
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: _______________________________ By: _______________________________
   Town Clerk                          Jill Grossman-Belisle, Mayor

TIMNATH DEVELOPMENT AUTHORITY

ATTEST:

By: _______________________________ By: _______________________________
   Name: _____________________________ Jill Grossman-Belisle, Chair
   Title: _____________________________