

TOWN OF TIMNATH

ORDINANCE NO. 108, SERIES 2011

AN ORDINANCE APPROVING A SECOND AMENDMENT TO THE FEBRUARY 17, 2009 INTERGOVERNMENTAL AGREEMENT ENTERED INTO BETWEEN THE TOWN OF TIMNATH AND THE CITY OF FORT COLLINS

WHEREAS, the Town of Timnath ("Timnath") and the City of Fort Collins ("Fort Collins") entered into an intergovernmental agreement relating to annexation, growth management and related issues on February 17, 2009 ("IGA"); and

WHEREAS, the Timnath Town Council approved the IGA by motion at its regular Council meeting on February 11, 2009; and

WHEREAS, the Timnath Town Council approved the First Amendment to Intergovernmental Agreement by Ordinance on March 3, 2010; and

WHEREAS, Fort Collins entered into a separate intergovernmental agreement with Larimer County that established boundaries for the Fort Collins Growth Management Area (the "FCGMA"); and

WHEREAS, Section 2.2(b) of the IGA requires that Fort Collins seek the approval of Larimer County to amend the boundaries of the FCGMA to match the boundaries stated in the IGA by February 17, 2011; and

WHEREAS, the boundaries set forth in the IGA conflict with the boundaries established in the Fort Collins/Larimer County intergovernmental agreement, which also states that Fort Collins will not amend those boundaries without the consent of the County; and

WHEREAS, because of the conflicting obligations of Fort Collins under these two agreements, Fort Collins has requested, and Timnath has agreed, to amend the IGA and extend the deadline imposed by Section 2.2(b) for another one year period to afford Timnath and Larimer County adequate time to resolve their differences and come to agreement about the boundary between the Timnath Growth Management Area and the FCGMA; and

WHEREAS, Timnath has decided that it no longer intends to pursue the acquisition of the Vangbo Property.

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

Section 1. Approval of the Second Amendment to the IGA. The Second Amendment to Intergovernmental Agreement Regarding Cooperation on Annexation, Growth Management and Related Issues ("Amendment"), a true copy of which is attached hereto and incorporated herein by reference, is hereby approved. The Mayor is hereby authorized to execute the Amendment, and the Town Clerk is directed to affix the seal of the Town thereto and attest same.

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 part

RECEPTION#: 20110013842, 03/01/2011 at
04:00:35 PM,
1 OF 6, R \$36.00 TD Pgs: 0
Scott Doyle, Larimer County, CO

✓
Please Return to:
Town of Timnath
4800 Goodman Street
Timnath, CO 80547

or any parts be declared unconstitutional or invalid.

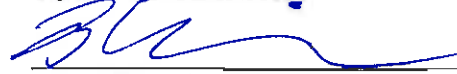
Section 5. Repealer. All ordinances or resolutions, or parts thereof, in conflict with this Ordinance are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

Section 6. Effective Date. This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING, SET FOR PUBLIC HEARING AND SECOND READING AT 7:00 P.M. ON FEBRUARY 2, 2011 AT THE TIMNATH TOWN HALL, 4800 GOODMAN STREET, TIMNATH, COLORADO AND ORDERED PUBLISHED BY TITLE THIS 18TH DAY OF JANUARY, 2011.

MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON FEBRUARY 2, 2011.

TOWN OF TIMNATH



Bryan Voronin, Mayor Pro Tem

ATTEST:


Milissa McGuire, Town Clerk



APPROVED AS TO FORM:


Ted Svitavsky, Town Attorney

SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT
(Regarding Cooperation on Annexation, Growth Management and Related Issues)

THIS SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT (“Amendment”) is made and entered into this 2nd day of February, 2011, by and between THE TOWN OF TIMNATH, COLORADO, a Colorado home rule town (hereinafter referred to as “Timnath”), and THE CITY OF FORT COLLINS, COLORADO, a Colorado home rule municipal corporation (hereinafter referred to as “Fort Collins”).

RECITALS

WHEREAS, on February 17, 2009, Timnath and Fort Collins entered into an intergovernmental agreement relating to annexation, growth management and related issues, which agreement resolved certain differences that had arisen between the parties regarding a variety of planning and growth management issues (the “Intergovernmental Agreement”); and

WHEREAS, Section 2.2(b) of the Intergovernmental Agreement requires that by February 17, 2010, Fort Collins seek the approval of Larimer County to amend the boundaries of the Fort Collins Growth Management Area (the “FCGMA”) to match the boundaries that are specified in the Intergovernmental Agreement; and

WHEREAS, Section 2.2(b) of the Intergovernmental Agreement also provides that irrespective of whether or not the County approves the amendment of the FCGMA, Fort Collins shall, within the same period of time, take all actions necessary to amend the boundaries of the FCGMA independently of the intergovernmental agreement between Fort Collins and Larimer County dated November 21, 2000 (the “City/County IGA”); and

WHEREAS, Section 2.3(b) of the Intergovernmental Agreement contains a similar provision stating that Timnath shall, within one year, amend the boundaries of its Growth Management Area (the “TGMA”) match the boundaries that are specified in the Intergovernmental Agreement; and

WHEREAS, due to a number of extenuating circumstances, the parties have not yet been able to accomplish the amendment of their respective growth management area boundaries; and

WHEREAS, Article 6 of the Intergovernmental Agreement grants to Timnath an “option period” within which Timnath has the right to purchase from Fort Collins certain open space known as the Vangbo Property; and

WHEREAS, on March 3, 2010, the parties executed a First Amendment to Intergovernmental Agreement which extended the periods of time within which Fort Collins was to amend the FCGMA and Timnath was to provide written notice to Fort Collins of its intent to exercise its option to purchase the Vangbo Property; and

WHEREAS, Timnath has decided that it no longer intends to pursue the acquisition of the Vangbo Property; and

WHEREAS, the parties wish to execute a second amendment to the Intergovernmental Agreement to: (1) extend until February 17, 2012, the period of time within which both parties will amend the boundaries of their growth management areas; and (2) eliminate the provisions of the Intergovernmental Agreement that establish Timnath's option to purchase the Vangbo Property.

NOW, THEREFORE, in consideration of the mutual promises of the parties and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Section 2.2(b) of the Intergovernmental Agreement is hereby amended to extend the period of time within which Fort Collins must amend the FCGMA, so that such Section reads in its entirety as follows:

(b) Fort Collins shall seek the approval of Larimer County to amend the boundaries of the FCGMA in accordance with Section 2.2(a) above. In addition, and irrespective of whether or not Larimer County approves such amendment, Fort Collins shall, on or before February 27, 2012, take all actions necessary to amend those boundaries to the FCGMA as it exists independently of the Intergovernmental Agreement between Fort Collins and Larimer County, Colorado dated November 21, 2000, to conform the FCGMA to the limitations of Section 2.2(a) above, it being the intention of and agreement of the parties that the requirements of Section 2.1 shall apply to the (as hereby described and amended) FCGMA boundaries irrespective of any action by Larimer County.

2. Section 2.3(b) of the Intergovernmental Agreement is hereby amended to extend the period of time within which Timnath must amend the TGMA, so that such Section reads in its entirety as follows:

(b) Timnath shall amend the TGMA in accordance with Section 2.3(a) above on or before February 17, 2012.

3. That Article 6 of the Intergovernmental Agreement is hereby rescinded and shall be of no further force and effect whatsoever.

4. No Further Modification. Except as expressly amended by this Amendment, the Intergovernmental Agreement is unmodified and shall continue in full force and effect.

5. Binding Agreement. Both Timnath and Fort Collins intend that this Amendment shall be binding upon them.

6. Amendments. This Amendment may only be amended, changed, modified or altered in writing, signed by both parties hereto.

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

8. Jointly Drafted; Rules of Construction. The parties hereto agree that this Amendment was jointly drafted, and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

9. Defined Terms. Capitalized terms used in this Agreement but not otherwise defined herein shall have the meanings set forth in the Intergovernmental Agreement.

[The Remainder of Page Intentionally Left Blank. Signature Pages Follow.]

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

THE TOWN OF TIMNATH, COLORADO

By: [Signature]
Mayor - Pro Tem

ATTEST:

[Signature]
Town Clerk

APPROVED AS TO FORM

[Signature]
Town Attorney



THE CITY OF FORT COLLINS, COLORADO

By: [Signature]
Mayor

ATTEST:

[Signature]
City Clerk

APPROVED AS TO FORM

[Signature]
City Attorney

