1. CALL TO ORDER AND ROLL CALL
   Mayor        Jill Grossman-Belisle
   Councilmember Bill Neal
   Councilmember Aaron Pearson
   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 July 14, 2015, Town Council Meeting Minutes
   b. Approval of the July 28, 205, Town Council Meeting Minutes
   c. Ratification of Resolution No. 52, Series 2015, A Resolution Approving the Harmony Road Median Contract
   d. Approval of the Check Register

5. REPORTS
   a. Mayor and Council

6. ORDER OF BUSINESS:
   a. ORDINANCE NO. 10, SERIES 2015, SECOND READING, PUBLIC HEARING, An Ordinance
      Providing for an Election Concerning Amendments to the Home Rule Charter of the Town of
      Timnath, Colorado
         Presented by Robert Rogers, Contracted Town Attorney
   b. RESOLUTION NO. 53, SERIES 2015, A Resolution Approving the Skeebo Minor Subdivision
      Presented by Matt Blakely, Contracted Town Planner
   c. RESOLUTION NO. 54, SERIES 2015, A Resolution Approving the Bella Minor Subdivision
      Presented by Matt Blakely, Contracted Town Planner
   d. RESOLUTION NO. 55, SERIES 2015, A Resolution Approving the Amended and Restated
      Subdivision Improvement Agreement for Serratoga Falls Filing 2 and Future Filings
         Presented by Robert Rogers, Contracted Town Attorney
   e. 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 Robert Rogers, Contracted Town Attorney

7. ADJOURNMENT
Town of Timnath
Regular Meeting Minutes
Tuesday, July 14, 2015
IMMEDIATELY FOLLOWED THE TIMNATHE DEVELOPMENT AUTHORITY MEETING AT 6:00 p.m.
Meeting was held at Timnath Administration Building, 4800 Goodman Street, Timnath, Colorado

1. CALL TO ORDER AND ROLL CALL:
Mayor Grossman-Belisle called to order the meeting of the Town Council on Tuesday, July 14, 2015, at 6:03 p.m.

Present:
   a. Mayor Jill Grossman-Belisle
   b. Councilmember Bill Neal
   c. Councilmember Aaron Pearson
   d. Councilmember Paul Steinway
   e. Councilmember Bryan Voronin

Also Present:
   a. April Getchius, Town Manager
   b. Robert Rogers, Contracted Town Attorney
   c. Don Taranto, Contracted Town Engineer
   d. Matt Blakely, Contracted Town Planner
   e. Kevin Koelbel, Contracted Town Planner
   f. Sherri Wagner, Police Chief
   g. Mike DiTullio, FLWD
   h. John Sample

2. AMENDMENTS TO THE AGENDA:
   a. None

3. PUBLIC COMMENT ON NON-AGENDA ITEMS:
   a. John Sample, spoke to Council about his concerns regarding CR 40.

4. CONSENT AGENDA:
   a. Approval of the June 23, 2015, Town Council Meeting Minutes
   b. Approval of the Check Register

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

5. REPORTS:
   a. Mayor/Council-
6. ORDER OF BUSINESS:
   a. DISCUSSION/PRESENTATION: Fort Collins/Loveland Water District
      Staff Comments:
      • Mr. DiTullio spoke to Council about the new water tower.

   b. ORDINANCE NO. 7, SERIES 2015, SECOND READING, PUBLIC HEARING,
      An Ordinance Approving the Wild Wing Quit Claim Deed
      Mayor Grossman-Belisle opened the public hearing at 6:16 p.m.

      Staff Comments:
      • Mr. Blakely spoke to Council about the proposed ordinance.

      Public Comments:
      • NONE

      Mayor Grossman-Belisle closed the public hearing at 6:16 p.m.
      Councilmember Steinway moved to approve ORDINANCE NO. 7, SERIES 2015, An Ordinance Approving the Wild Wing Quit Claim Deed. Councilmember Pearson seconded the motion. The motion passed unanimously by voice vote.

   c. ORDINANCE NO. 8, SERIES 2015, SECOND READING, PUBLIC HEARING,
      An Ordinance Disposing of Real Property Interest in Riverbend Subdivision, First Filing
      Mayor Grossman-Belisle opened the public hearing at 6:18 p.m.

      Staff Comments:
      • Mr. Blakely spoke to Council about the proposed ordinance.

      Public Comments:
      • NONE

      Mayor Grossman-Belisle closed the public hearing at 6:18 p.m.
      Councilmember Neal moved to approve ORDINANCE NO. 8, SERIES 2015, An Ordinance Disposing of Real Property Interest in Riverbend Subdivision, First Filing. Councilmember Pearson seconded the motion. The motion passed unanimously by voice vote.

   d. ORDINANCE NO. 9, SERIES 2015, FIRST READING, An Ordinance Amending the Official Zoning Map of the Town of Timnath for the Purpose of Zoning Certain Real Property Located at 4025 Kern Street set for Public Hearing on July 28, 2014, at 6:00 p.m.
      Staff Comments:
      • Mr. Blakely spoke to Council about the proposed ordinance.

      Councilmember Neal moved to approve ORDINANCE NO. 9, SERIES 2015, FIRST READING, An Ordinance Amending the Official Zoning Map of the Town of Timnath for the
Purpose of Zoning Certain Real Property Located at 4025 Kern Street set for Public Hearing on July 28, 2014, at 6:00 p.m. Councilmember Pearson seconded the motion. The motion passed unanimously by voice vote.

e. RESOLUTION NO. 41, SERIES 2015, A Resolution Approving the 2014 Audit Performed by Wagner Barnes & Griggs, P.C.
   Staff Comments:
   • Eric Barnes spoke to Council about the proposed resolution.
   Councilmember Neal moved to approve RESOLUTION NO. 41, SERIES 2015, A Resolution Approving the 2014 Audit Performed by Wagner Barnes & Griggs, P.C. Councilmember Steinway seconded the motion. The motion passed unanimously by voice vote.

f. RESOLUTION NO. 42, SERIES 2015, A Resolution Approving the Hiring of an Additional Officer Prior to the End of the 2015 Calendar Year
   Staff Comments:
   • Chief Wagner spoke to Council about the proposed resolution.
   Town Council Questions and Comments:
   • Mayor Grossman-Belisle asked about the department going 24/7 and Ms. Wagner spoke about the requirements to do so.
   Councilmember Neal moved to approve RESOLUTION NO. 42, SERIES 2015, A Resolution Approving the Hiring of an Additional Officer Prior to the End of the 2015 Calendar Year. Councilmember Voronin seconded the motion. The motion passed unanimously by voice vote.

g. RESOLUTION NO. 43, SERIES 2015, A Resolution Approving the Sketch Planned Development Overlay for Timnath Landing Subdivision, Generally Located East of and Adjacent to CR 5/Main Street, and North of and Adjacent to Harmony Road
   Staff Comments:
   • Mr. Blakely spoke to Council about the proposed resolution.
   ITEM WAS TABLED INDEFINITELY

h. RESOLUTION NO. 44, SERIES 2015, A Resolution Approving An Amended And Restated Resolution Approving The Amended And Restated Service Plan For Wildwing Metropolitan District Nos. 1-5
   Staff Comments:
   • Mr. Rogers spoke to Council about the proposed resolution.
   Councilmember Steinway moved to approve RESOLUTION NO. 44, SERIES 2015, A Resolution Approving An Amended And Restated Resolution Approving The Amended And Restated Service Plan For Wildwing Metropolitan District Nos. 1-5. Councilmember Neal seconded the motion. The motion passed unanimously by voice vote.
i.  RESOLUTION NO. 45, SERIES 2015, A Resolution Approving the Purchase of a Public Works Vehicle from the Town of Windsor

Staff Comments:

- Mr. Taranto spoke to Council about the proposed resolution.

Councilmember Voronin moved to approve RESOLUTION NO. 45, SERIES 2015, A Resolution Approving the Purchase of a Public Works Vehicle from the Town of Windsor. Councilmember Pearson seconded the motion. The motion passed unanimously by voice vote.

j.  RESOLUTION NO. 46, SERIES 2015, A Resolution Approving the Purchase of an Emergency Backup Generator from Cummins Rocky Mountain

Staff Comments:

- Mr. Taranto spoke to Council about the proposed resolution.

Councilmember Neal moved to approve RESOLUTION NO. 46, SERIES 2015, A Resolution Approving the Purchase of an Emergency Backup Generator from Cummins Rocky Mountain. Councilmember Pearson seconded the motion. The motion passed unanimously by voice vote.

k.  RESOLUTION NO. 47, SERIES 2015, A Resolution Approving the Standard Services Agreement with APEX Pavement Solutions for the 2015 Road Maintenance Program

Staff Comments:

- Mr. Taranto spoke to Council about the proposed resolution.

Councilmember Neal moved to approve RESOLUTION NO. 47, SERIES 2015, A Resolution Approving the Standard Services Agreement with APEX Pavement Solutions for the 2015 Road Maintenance Program. Councilmember Pearson seconded the motion. The motion passed unanimously by voice vote.

l.  RESOLUTION NO. 48, SERIES 2015, A Resolution Approving the Standard Services Agreement with Precision Pavement Marking for the 2015 Roadway Striping Program

Staff Comments:

- Mr. Taranto spoke to Council about the proposed resolution.

Councilmember Steinway moved to approve RESOLUTION NO. 48, SERIES 2015, A Resolution Approving the Standard Services Agreement with Precision Pavement Marking for the 2015 Roadway Striping Program. Councilmember Voronin seconded the motion. The motion passed unanimously by voice vote.

a.  DISCUSSION: Summerfield Ditch Crossing Design

Staff Comments:

- Mr. Blakely spoke to Council about the proposed design.

m. 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.”

Councilmember Steinway moved to approve enter into 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.”. Councilmember Pearson seconded the motion. The motion passed unanimously by voice vote.

Council went into executive session at 7:40 pm. The regular meeting reconvened at 7:58 pm.

n. DISCUSSION/POSSIBLE ACTION: Town Manager Review Adjustment

Councilmember Neal moved to approve the Town Manager Review Adjustment. Councilmember Pearson seconded the motion. The motion passed unanimously by voice vote.

7. ADJOURNMENT:

Mayor Grossman-Belisle adjourned the meeting 8:00 p.m.

Town Council approved the July 14, 2015, Town Council Meeting Minutes on August 11, 2015.

TOWN OF TIMNATH

________________________________________
Jill Grossman-Belisle, Mayor

ATTEST:

________________________________________
Milissa Peters, CMC
Town Clerk
Town of Timnath
Regular Meeting Minutes
Tuesday, July 28, 2015
IMMEDIATELY FOLLOWED THE TIMNATH LIQUOR BOARD MEETING AT 6:00 p.m.
Meeting was held at Timnath Administration Building,
4800 Goodman Street, Timnath, Colorado

1. CALL TO ORDER AND ROLL CALL:
Mayor Grossman-Belisle called to order the meeting of the Town Council on Tuesday, July 28, 2015, at 6:04 p.m.

Present:
 a. Mayor Jill Grossman-Belisle
 b. Councilmember Aaron Pearson
 c. Councilmember Bryan Voronin

Absent
 a. Councilmember Bill Neal
 b. Councilmember Paul Steinway

Also Present:
 a. April Getchius, Town Manager
 b. Robert Rogers, Contracted Town Attorney
 c. Eric Fuhrman, Contracted Town Engineer
 d. Matt Blakely, Contracted Town Planner
 e. Kevin Koelbel, Contracted Town Planner
 f. Gary Hoover, Hartford Homes
 g. Landon Hoover, Hartford Homes
 h. Steve Whittall, Timnath Resident and Applicant
 i. Tony Meza, Timnath Resident
 j. Jesse McDowell, Serratoga Falls

2. AMENDMENTS TO THE AGENDA:
a. Item added as 6f and item 6f moved to 6g.

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

4. CONSENT AGENDA:
a. Approval of the Check Register
Councilmember Voronin moved to approve the consent agenda. Councilmember Pearson seconded the motion. The motion passed unanimously by voice vote.
5. REPORTS:
   a. Mayor/Council-
      i. Public meeting regarding the new water tower
   b. Staff-Included in the packets

6. ORDER OF BUSINESS:
   a. ORDINANCE NO. 9, SERIES 2015, SECOND READING, PUBLIC HEARING,
      An Ordinance Amending the Official Zoning Map of the Town of Timnath for the
      Purpose of Zoning Certain Real Property Located at 4025 Kern Street
   Staff Comments:
      • Mr. Blakely spoke to Council about the proposed ordinance.

   Applicant presentation:
      • Mr. Whittall spoke to Council about the proposed rezoning.

   Mayor Grossman-Belisle opened the public hearing at 6:10 p.m.

   Public Comments:
      • Tony Meza, Timnath Resident, spoke to Council about his concerns regarding another
        house being put on the property being rezoned.

   Town Council Questions and Comments:
      • Councilmember Voronin asked what was currently on the lot and Mr. Blakely stated
        that there was house on the lot but that 2 other buildings were planned for the
        property.
      • Councilmember Voronin asked about the minimum lot sizes between the current
        zoning and the proposed rezoning. Mr. Blake stated that there were no lot size
        requirements for the current business zoning.

   Mayor Grossman-Belisle closed the public hearing at 6:12 p.m.

   Councilmember Pearson moved to approve ORDINANCE NO. 9, SERIES 2015, An Ordinance
   Amending the Official Zoning Map of the Town of Timnath for the Purpose of Zoning Certain Real
   Property Located at 4025 Kern Street. Councilmember Voronin seconded the motion. The
   motion passed unanimously by voice vote.

   b. ORDINANCE NO. 10, SERIES 2015, FIRST READING, An Ordinance Providing
      for an Election Concerning Amendments to the Home Rule Charter of the Town of
      Timnath, Colorado and set for Public Hearing on August 11, 2015, at 6:00 p.m.
   Staff Comments:
      • Mr. Rogers spoke to Council about the proposed ordinance.

   Town Council Questions and Comments:
Mayor Grossman-Belisle thanked the committee for getting information out to the public regarding this matter.

Councilmember Pearson moved to approve ORDINANCE NO. 10, SERIES 2015, FIRST READING, An Ordinance Providing for an Election Concerning Amendments to the Home Rule Charter of the Town of Timnath, Colorado and set for Public Hearing on August 11, 2015, at 6:00 p.m. Councilmember Voronin seconded the motion. The motion passed unanimously by voice vote.

c. RESOLUTION NO. 49, SERIES 2015, A Resolution Approving the Timnath Reservoir Lease Extension
   Staff Comments:
   • Ms. Getchius spoke to Council about the proposed resolution.

Town Council Questions and Comments:
• Mayor Grossman-Belisle asked that the extension be shortened to 90 days.

Councilmember Pearson moved to approve RESOLUTION NO. 49, SERIES 2015, A Resolution Approving the Timnath Reservoir Lease Extension as amended to 90 days. Councilmember Voronin seconded the motion. The motion passed unanimously by voice vote.

d. RESOLUTION NO. 50, SERIES 2015, A Resolution Approving the Sketch Planned Development Overlay for Wildwing Subdivision
   Staff Comments:
   • Mr. Blakely spoke to Council about the proposed resolution.

Applicant Presentation:
• Mr. Landon Hoover presented to Council several examples for the proposed resolution.

Town Council Questions and Comments:
• Councilmember Voronin asked for clarification on the proposed resolution and Mr. Blakely explained the proposed plan.

Councilmember Pearson moved to approve RESOLUTION NO. 50, SERIES 2015, A Resolution Approving the Sketch Planned Development Overlay for Wildwing Subdivision. Councilmember Voronin seconded the motion. The motion passed unanimously by voice vote.

e. RESOLUTION NO. 51, SERIES 2015, A Resolution Approving the Serratoga Falls Subdivision Final Plat
   Staff Comments:
   • Mr. Blakely spoke to Council about the proposed resolution.

Applicant Presentation:
• Mr. McDowell spoke to Council about the parks and open space. He also stated that there would be changes to accommodate a larger set back along the irrigation ditch.

Town Council Questions and Comments:
• Mayor Grossman-Belisle asked if the ditch set backs were adequate and Mr. Blakely stated that there had been discussions regarding the set-backs with the ditch easement owner’s attorney.
• Mayor Grossman-Belisle asked the timeline for build-out of the parks and Mr. McDowell stated that it was planned to be completed within 12 to 18 months.
• Councilmember Voronin asked about the easement along the east side of the ditch and Mr. Blakely stated that there was a prescriptive easement on the east side.

**Councilmember Voronin moved to approve RESOLUTION NO. 51, SERIES 2015, A Resolution Approving the Serratoga Falls Subdivision Final Plat. Councilmember Pearson seconded the motion. The motion passed unanimously by voice vote.**

**f. ADDED – RESOLUTION:** A Resolution Approving the Agreement with Korby Landscape LLC for the Harmony Road IIA Median Improvements  
Staff Comments:
• Mr. Blakely spoke to Council about the proposed resolution to be ratified at the following Town Council meeting on August 11, 2015.

Town Council Questions and Comments:
• Mayor Grossman-Belisle asked if the Main Street round-about was included and Mr. Blakely stated that it was not included in the proposed resolution.
• Councilmember Pearson asked about the irrigation improvements and Mr. Blakely explained the inclusion of the irrigation improvements regarding the Riverbend development.

**Councilmember Voronin moved to approve A Resolution Approving the Agreement with Korby Landscape LLC for the Harmony Road IIA Median Improvements. Councilmember Pearson seconded the motion. The motion passed unanimously by voice vote.**

**g. 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 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.”  

**Councilmember Pearson moved to approve enter into 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 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.”. **Councilmember Voronin seconded the motion. The motion passed unanimously by voice vote.**
Council went into executive session at 6:54 pm.
The regular meeting reconvened at 7:10 pm.

7. ADJOURNMENT:

Mayor Grossman-Belisle adjourned the meeting 7:11 p.m.

Town Council approved the July 28, 2015, Town Council Meeting Minutes on August 11, 2015.

TOWN OF TIMNATH

_____________________________________
Jill Grossman-Belisle, Mayor

ATTEST:

_____________________________________
Milissa Peters, CMC
Town Clerk
TOWN COUNCIL COMMUNICATION

Meeting Date: August 11, 2015

Item: Resolution No. 52, Series 2015, A Resolution Approving A Standard Services Agreement with Korby Landscape LLC for the Harmony Road IIA Median Improvements

Presented by: Matt Blakely
Town Planner

EXECUTIVE SUMMARY:

- Agreement between the Town and Korby Landscape LLC to complete the landscape median improvements along Harmony Road.
- Budget adjustment request to $260,000. This budget amount will include the following:
  - Korby contract = $185,354.10
  - ¾” Irrigation Tap = $36,784.00
  - Design, presentation, renderings, bidding, and construction administration = $30,000.00
  - Korby contingency = $7,861.90

The Town of Timnath is prepared to make improvements to the medians located along Harmony Road east of Main Street and west of the railroad tracks. The improvements include the installation of concrete splash blocks, irrigation improvements, and landscaping as per Town Council’s approval of Resolution 8, Series 2015 – The Harmony Road Median Landscape Improvement Concept Plan. In January 2015, the 2015 budget was revised to include $150,000 for this project. These dollars were moved from the Harmony Road Widening Phase III budget.

STAFF RECOMMENDATION: Staff recommends that Council award the contract with Korby Landscape LLC to complete the Harmony Road Phase IIA Median Improvements.

KEY POINTS/SUPPORTING INFORMATION:

The Town published the bid for the project utilizing the Rocky Mountain E-purchasing system on June 29, 2015. Bids were received, opened, and read aloud by the Town on July 24, 2015 at 2pm. The Town received one bid for the project even though there were several bidders interested throughout the bid process.

The bid that was submitted was from Korby Landscape LLC. They have been doing business as a landscape contractor in the area for 35 years. They have worked with the City of Fort Collins on similar projects. They are located in Wellington, Colorado. Their bid met all the necessary requirements as stipulated in the contract documents.

The bid as submitted totaled: $185,354.10
Engineer’s estimate: $168,946.00
Percent variance: 9%

The bid is more than the budgeted amount for the project and doesn’t include design, bidding, and construction observation time. Town Staff has reviewed the budget and is requesting that it be revised to $260,000. This amount will cover the design, bidding, and construction administration phases of the project as well as the construction.
**ADVANTAGES:**
- Awarding this contract completes the improvements to Harmony Road – Phase IIA.
- Beautification of the Harmony Corridor within the Town.
- Irrigation infrastructure necessary to connect the future Riverbend (Signal Tree ROW) landscaping improvements will be installed with this work.

**DISADVANTAGES:**
- Additional maintenance

**FINANCIAL IMPACT:**
- This is a budgeted item. Town Council directed Staff to go forward with bidding this work per Resolution 8, Series 2015. The bid received exceeds the budgeted amount of $150,000 by $35,354.10.
- Staff is requesting additional budget dollars to cover the cost of the irrigation tap, design, bidding, and construction administration as well as the actual construction for a total budget adjustment request of $260,000.
- The funds for these improvements would be reallocated from the Harmony Road Phase III improvements. Harmony Road Phase III currently has $1,400,000 allocated. This budget amount anticipated construction work commencing on Phase III in 2015. A portion of Phase III work may commence in 2015, but much of that work will be shifted to 2016. This additional $110,000 would come out of the budget for the 2015 Phase III work.

**RECOMMENDED MOTION:**
- I move to approve Resolution No. 52, Series 2015 approving the Standard Services Agreement with Korby Landscape LLC for the Harmony Road Phase IIA – Landscape Medians.

**ATTACHMENTS:**
1. Resolution
2. Agreement
3. Town Council Purchase Authorization
4. Request for Purchase Exceeding Approved Budget
5. Notice of Award
6. Notice to Proceed
**Town Council Purchase Authorization**

**Date:** August 11, 2015  
**Vendor:** Korby Landscape LLC  
**Department:** Community Development  
**Project:** Harmony Road Phase IIA - Landscape Improvements

**Description:** Landscape improvements to the medians located along Harmony Road east of Main Street and west of the railroad tracks. The improvements include the installation of concrete splash blocks, irrigation improvements, and landscaping.

**Is this purchase more than $25,000**  
___X__Yes  
____No

**Is this the purchase of Real Estate or Land**  
_____Yes  
__X__No

**Is this the purchase of Public Art**  
_____Yes  
__X__No

**Is this a budget request for a purchase that will exceed the approved budget**  
___X__Yes  
____No

**Advantages:**  
- Awarding this contract completes the improvements to Harmony Road – Phase IIA.  
- Beautification of the Harmony Corridor within the Town.  
- Irrigation infrastructure necessary to connect the future Riverbend (Signal Tree ROW) landscaping improvements will be installed with this work.

**Disadvantages:**  
- Additional maintenance

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<th>Additional Budget Requested</th>
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**Financial Impact:**  
- This is a budgeted item. Town Council directed Staff to go forward with bidding this work per Resolution 8, Series 2015. The bid received exceeds the budgeted amount of $150,000 by $35,354.10. Funding for amount in excess of the budget will be reallocated from the Harmony Road Phase III project.

**Recommendation/Justification:**  
Recommend approval to complete the improvements to Harmony Road.

---

**Requesting Department Signature**  
__Date__

---

**Town Manager Signature**  
__Date__
# Request for Purchase Exceeding Approved Budget

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<td>Project:</td>
<td>Harmony Road IIA Median Improvements</td>
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<tr>
<td>Description:</td>
<td>Agreement between the Town and Korby Landscape LLC to complete the landscape median improvements along Harmony Road.</td>
</tr>
</tbody>
</table>
| Advantages:         | • Awarding this contract completes the improvements to Harmony Road – Phase IIA.  
                       • Beautification of the Harmony Corridor within the Town. |
| Disadvantages:      | • Additional maintenance |
| Explanation of why this purchase is needed: | • This work will complete the Phase IIA Harmony Road Improvements. |
| Financial Impact:   | • The bid received exceeds the budgeted amount of $150,000 by $35,354.10.  
                       • Staff is requesting additional budget dollars to cover the cost of the irrigation tap, design, presentation, renderings, bidding, and construction administration as well as the actual construction for a total budget adjustment request of $260,000. |
| Where are the additional funds coming from: | The additional funds will be reallocated from Harmony Road Widening III project for 2015. 2015 dollars for this item totaled $1,400,000. The Town is completing the design of those improvements now, with a portion of that work possibly commencing in 2015, but the majority of it will shift to 2016. |
| Does this purchase require Council’s approval | X Yes  No |
| Recommendations:    | Staff recommends that Council award the contract with Korby Landscape LLC to complete the Harmony Road Phase IIA Median Improvements and increase the budget to $260,000 to cover the increased bid cost and the irrigation tap, presentation, renderings, design, bidding, and construction administration. |

Requesting Department Signature          Date

Town Manager Signature          Date
A RESOLUTION APPROVING STANDARD SERVICES AGREEMENT WITH KORBY LANDSCAPE LLC FOR THE HARMONY ROAD IIA MEDIAN IMPROVEMENTS

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 Professional Services Agreement Between the Town of Timnath and Korby Landscape LLC. (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.


TOWN OF TIMNATH, COLORADO

____________________________________
Jill Grossman-Belisle, Mayor

ATTEST:

____________________________________
Milissa Peters, CMC
Town Clerk
EXHIBIT A

AGREEMENT
AGREEMENT

This agreement is dated as of the _____ day of ________________, 2015 by and between:

Town of Timnath (hereinafter called Owner) and

Korby Landscape, LLC hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

Contractor shall complete all work as specified or indicated in the Contract Documents. The work is generally described as follows: Harmony Median

ARTICLE 2. ENGINEER

The project has been designed by TST, Inc. Consulting Engineers who is hereinafter called Engineer and who will assume all duties and responsibilities and will have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

3.1 The work will be substantially completed within 45 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 60 calendar days after the date when the Contract Time commences to run.

3.2 Liquidated Damages: Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the work is not substantially complete on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner five hundred dollars ($500.00) for each calendar day that expires after the time specified in paragraph 3.1 for substantial completion until the work is substantially complete.

3.3 After Substantial Completion if Contractor shall neglect, refuse or fail to complete the remaining work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner five hundred dollars ($500.00) for each calendar day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.
ARTICLE 4. CONTRACT PRICE

4.1 Owner shall pay Contractor for performance of the work in accordance with the Contract Documents in current funds as follows: one thousand eighty five, three hundred fifty four dollars and ten cents. $185,354.10

ARTICLE 5. PAYMENT PROCEDURES

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

5.1 Progress Payments. Owner shall make progress payments on account of the Contract Price on the basis of Contractor’s Applications for Payment as recommended by Engineer, on or about the 10th day of each month following the month that the Engineer received and processed the application during construction as provided below. All progress payments will be on the basis of the progress of the work measured by the schedule of values established in paragraph 2.07 of the General Conditions (and in the case of Unit Price work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

5.1.1 Prior to Substantial Completion progress payments will be in the amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine, or Owner may withhold, in accordance with paragraph 14.02 of the General Conditions.

Ninety-five percent (95%) of work completed.

Ninety-five percent (95%) of materials and equipment not incorporated in the work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 14.02 of the General Conditions).

5.1.2 Upon Substantial Completion in an amount sufficient to increase total payments to Contractor to ninety-five percent (95%) of the Contract Price, less such amounts as Engineer shall determine or Owner may withhold in accordance with paragraph 14.02 of the General Conditions.

5.2 Final Payment. Upon final completion and acceptance of the work in accordance with paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph 14.07.

ARTICLE 6. INTEREST

All moneys not paid when due hereunder as provided in Article 14 of the General Conditions shall bear interest at a rate not exceeding 12.0 percent per annum.

ARTICLE 7. CONTRACTOR’S REPRESENTATIONS

In order to induce Owner to enter into this Agreement Contractor makes the following representations:
7.1 Contractor has familiarized himself with the nature and extent of the Contract Documents, work, site, locality, and with all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the work.

7.2 Contractor has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions, and accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which Contractor is entitled to reply.

7.3 Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to or to supplement those referred to in paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.02 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

7.4 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by Contractor in order to perform and furnish the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.04 of the General Conditions.

7.5 Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

7.6 Contractor has given Engineer written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.

ARTICLE 8.  CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between Owner and Contractor concerning the work consist of the following:

8.1 This Agreement (pages 1 to 6, inclusive).

8.2 Performance and Labor and Material Payment Bond.

8.3 Notice of Award.

8.4 General Conditions (pages 1 to 62, inclusive).

8.5 Supplementary Conditions (pages 1 to 9, inclusive).
8.6 Drawings, consisting of a cover sheet and sheets numbered 1 through 8 inclusive with each sheet bearing the following general title: Harmony Median Landscape Improvements.

8.7 Contractor’s Bid.

8.8 The following which may be delivered or issued after the Effective date of the Agreement and are attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

ARTICLE 9. MISCELLANEOUS

9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge that assignor from any duty or responsibility under the Contract Documents.

9.3 Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

ARTICLE 10. PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS

1. The Contractor shall not:

   (A) Knowingly employ or contract with an illegal alien who will perform work under the public contract for services; or

   (B) Enter into a contract with a Subcontractor that fails to certify to the Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien who is newly hired to perform work under the public contract for services.

2. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the employment verification program established pursuant to C.R.S. 8-17.5-102(5) (“the Department Program”) or the electronic employment verification program created in Public Law 104-208, as amended, and expanded in Public Law 108-156, as amended and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program (“the E-verify Program”)
3. The Contractor shall use either the E-verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.

4. The Contractor shall, within twenty days after hiring an employee who is newly hired for employment to perform work under the public contract, affirm that the contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. 1324a, and not altered or falsified the identification documents for such employees. The contractor shall provide a written, notarized copy of the affirmation to the Owner.

5. If the Contractor obtains actual knowledge that a Subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall:

   (A) Notify the Subcontractor and the Owner within three days that the Contractor has actual knowledge that the Subcontractor is employing or contracting with an illegal alien; and

   (B) Terminate the subcontract with the Subcontractor if within three days of receiving the notice required pursuant to paragraph 4(A) the Subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the Subcontractor if during such three days the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien.

6. The Contract shall comply with any reasonable request by the Colorado Department of Labor and Employment (“the Department”) made in the course of an investigation that the Department is undertaking pursuant to C.R.S. 8-17.5-102(5)(a).

7. If a Contractor violates a provision of the public contract for services required pursuant to paragraphs 1-5, the Owner may terminate the contract for breach of the contract. If the contract is so terminated, the Contractor shall be liable for actual and consequential damages to the Owner.
ARTICLE 11. OTHER PROVISIONS

In witness whereof, the parties hereto have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or by Engineer on their behalf.

This Agreement will be effective on ____________________, 2015.

Owner: Town of Timnath
By: ________________________________

Contractor: Korby Landscape LLC
By: ________________________________

(CORPORATE SEAL) (CORPORATE SEAL)

Attest: ________________________________ Attest: ________________________________

Address for giving notices
Town of Timnath
4800 Goodman St.
Timnath, CO 80547

Address for giving notices
Korby Landscaping, LLC
2406 East County RD, #60
Wellington, CO 80549

License No. ____________________________
NOTICE OF AWARD

Dated:    July 30, 2015

TO:       Korby Landscape LLC
           Bidder

PROJECT: Harmony Median Landscape Improvements

OWNER:    Town of Timnath

Engineer’s Project No: 0879.0602.00

You are hereby notified that your Bid dated July 27, 2015 for the above Contract has been considered. You are the apparent successful bidder and have been awarded a contract for Harmony Median Landscape Improvements.

The Contract Price of your contract is:

Three copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award. Three sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within seven (7) days of the date of this Notice of Award, that is by Aug 6, 2015.

1. You must deliver to the Owner three fully executed counterparts of the Agreement including all the Contract Documents. This includes the sets of Drawings. Each of the Contract Documents must bear your signature on the cover of the page.

2. You must deliver with the executed Agreement the Contract Security (Bonds) as specified in the Instructions to Bidders, General Conditions (paragraph 5.01) and Supplementary Conditions.

Failure to comply with these conditions within the time specified will entitle Owner to consider your bid abandoned and to annul this Notice of Award.

Within five (5) days after you comply with those conditions, Owner will return to you two fully signed counterparts of the Agreement with the Contract Documents attached.

Town of Timnath
Owner

By: __________________________

Title: __________________________
NOTICE TO PROCEED

Date: ______________________

TO: Korby Landscape LLC ________________  
(Contractor)

PROJECT: Harmony Medians  

CONTRACT FOR: Harmony Median Landscape Improvements

Agreement Date: _________________

OWNER: Town of Timnath

You are notified that the Contract Time under the above contract will commence to run on ____________ 2015. By that date, you are to start performing the work and your other obligations under the Contract Documents. In accordance with Article 3 of the Agreement the dates of Substantial Completion and Final Completion for the entire project are ________, 2015 and ________, 2015, respectively.

Before you may start any work at the site, paragraph 2.05 of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Work at the site must be started by ________, 2015 as indicated in the Contract Documents.

Town of Timnath _________________

Owner

By: ____________________________

Title: ____________________________

Copy to Engineer
(Use Certified Mail, Return Receipt Requested)
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- **Vendor Name:**
- **Invoice Number:** 51691
- **Description:** Repairs to phone lines
- **Invoice Date:** 07/20/2015
- **Net Invoice Amount:** 105.00

### Total Staples Advantage:
- **Vendor:**
- **Vendor Name:**
- **Invoice Number:**
- **Description:**
- **Invoice Date:**
- **Net Invoice Amount:** 77.98

### Total Telco of the Rockies:
- **Vendor:**
- **Vendor Name:**
- **Invoice Number:**
- **Description:**
- **Invoice Date:**
- **Net Invoice Amount:** 138.72

### Total 3RD QTR 2015:
- **Vendor:**
- **Vendor Name:**
- **Invoice Number:**
- **Description:**
- **Invoice Date:**
- **Net Invoice Amount:** 105.00

### Total The Foothills Rotary Club of Fort Collin:
- **Vendor:**
- **Vendor Name:**
- **Invoice Number:**
- **Description:**
- **Invoice Date:**
- **Net Invoice Amount:** 105.00

## TST, INC CONSULTING ENGINEERS

### JULY 2015

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**Total JULY 2015:** 137,016.15

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Total TST, INC CONSULTING ENGINEERS:  
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W L Contractors Inc.  
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Total W L Contractors Inc.:  
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WHITE, BEAR, ANKELE, PC, ATTORNEYS AT LA  
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Total JULY 2015:  
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JULY 2015 DRD  

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Total JULY 2015 DRD:  
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Total WHITE, BEAR, ANKELE, PC, ATTORNEYS AT LA:  
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William H Smith & Associates PC  
27140  

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### Town of Timnath

**Payment Approval Report - check register**

**Report dates:** 6/1/2015-8/31/2015  
**Aug 05, 2015 12:28PM**

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Total Xcel Energy: 5,961.18

Grand Totals: 994,422.02

Dated: ________________________________

Mayor: ________________________________

City Council: ________________________________

City Recorder: ________________________________
GENERAL INFORMATION:

Meeting Date: August 11, 2015
Presented by: Town Attorney

EXECUTIVE SUMMARY: This Ordinance sets for election the question of whether to amend the Timnath Charter to incorporate the following changes: (1) increase the elector threshold at which the Town Council membership will be increased from 1,200 electors to 8,000 electors; (2) reduce limitations on the Town’s ability to appropriate funds for unanticipated expenditures; (3) extend the deadline for filing of the Town’s annual audit so that it is consistent with state law; (4) remove lax Council Member meeting attendance requirements and delegate responsibility for setting such requirements to the Town Council; (5) provide more flexibility to the Council in addressing potential future budget shortfalls; (6) remove one year waiting period required between the end of a term as a council member and subsequent employment with the Town; (7) amend the procedural requirements for council removal of the Town Manager and Town Commission members from their positions; and (8) incorporate various administrative and grammatical recommendations made by Town staff and consultants.

STAFF RECOMMENDATION:
Staff recommends approval of the attached Ordinance.

KEY POINTS/SUPPORTING INFORMATION:
- These changes will allow Timnath to continue to operate efficiently and effectively, while serving the best interest of the residents.
- Reducing limitations on fund appropriations gives the Town additional flexibility in regards to spending to take advantage of retail, job generating and other investment opportunities.
  - This flexibility will be safeguarded by a requirement to initiate any additional appropriations with a budget amendment through the ordinance process, which requires two meetings and a public hearing.
- Removing lax Council Member meeting attendance and delegating this responsibility to the Council, will hold the Town Council more accountable for attendance.
- Providing more flexibility for budget shortfalls reduces unnecessary limitations on the Council’s ability to address unforeseen financial challenges.
- Removing the one year waiting period allows the Town to hire the best person for a job, and other Charter and Code provisions prevent overlapping employment and Town Council service.
- Amending procedural requirements for Council removal of the Town Manager and Town Commission members enhances accountability to the Council.

ADVANTAGES:
- The Ordinance will set for election Charter amendments to save taxpayer money, remove unnecessary constraints from the Charter, reduce administrative burdens, and generally help the Town operate more efficiently and effectively.
**DISADVANTAGES:**
None.

**FINANCIAL IMPACT:**
Minimal financial impact in the form of reduced work time and administrative burdens.

**RECOMMENDED MOTION:**
I move approval of Ordinance No. 10, Series 2015 entitled An Ordinance Providing for an Election Concerning Amendments to the Home Rule Charter of the Town of Timnath, Colorado

**ATTACHMENTS:**
1. Ordinance
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, the Town may adopt and amend ordinances; and

WHEREAS, Section 31-2-210(1)(b), C.R.S., permits the Town Council, on behalf of the Town, to adopt an ordinance to submit proposed charter amendments to a vote of the registered electors of the Town and to adopt a ballot title for the proposed amendment.

WHEREAS, Section 1-41-103(1)(a), C.R.S., specifies that questions pertaining to amendments to the charter of any home rule municipality submitted by the legislative body of the home rule municipality, in accordance with said charter, shall appear on the TABOR-related ballot; and

WHEREAS, Section 1-41-101, CRS, requires that TABOR-related ballot issue elections be held on the first Tuesday of November of odd-numbered years, and November 3, 2015, is one of the election dates on which ballot issues may be submitted to the Town’s eligible electors pursuant to TABOR; and

WHEREAS, this Ordinance, entitled “An Ordinance Providing for an Election Concerning Amendments to the Home Rule Charter of the Town of Timnath, Colorado,” provides for increasing the elector threshold at which the Town Council membership will be increased from 1,200 electors to 8,000 electors, reducing limitations on the Town’s ability to appropriate funds for unanticipated expenditures, extending the deadline for filing of the Town’s annual audit so that it is consistent with state law, removing lax Council Member meeting attendance requirements and delegating this responsibility to Town Council, providing more flexibility to the Council in addressing potential future budget shortfalls, removing one year waiting period required between the end of a term as a council member and subsequent employment with the Town, and amending the procedural requirements for Council removal of the Town Manager and Town Commission members from their positions;

WHEREAS, these changes are intended to help Timnath operate more efficiently and effectively by decreasing administrative burdens and bringing various provisions of the Charter into step with corresponding state laws and the Charters of other municipalities of the Town’s size within the state; and

WHEREAS, The Town Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for
the preservation of public health, welfare, peace, safety and property and that this Ordinance is necessary for the protection of public convenience and welfare.

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

Section 1. Short Title. This ordinance shall be known as and may be cited by the short title “2015 Charter Amendment Election Ordinance”.

Section 2. Election Actions. All actions heretofore taken (consistent with the provisions of this ordinance) by or on behalf of the Town and the officers thereof directed toward the election and the objects and purposes herein stated are hereby ratified, approved and confirmed.

Section 3. Uniform Election Code. Pursuant to § 31-10-102.7, C.R.S., the Town Council elects to utilize the provisions of the Uniform Election Code of 1992, and in particular the provisions of Article 7.5 thereof, for the election called pursuant to Section 4 below. Unless otherwise defined herein, all terms used herein shall have the meanings defined in the Uniform Election Code of 1992, Title 1, Articles 1 to 13, C.R.S., Title 31, Article 25, Part 6, C.R.S. and TABOR.

Section 4. Calling of Election. Pursuant to TABOR, Title 1, Articles 1 to 13, C.R.S., Title 31, and Article 25, Part 6, C.R.S., the Town Council hereby calls a special election to be conducted on November 3, 2015, as a mail ballot election (the “Election”). Because the Election will be a mail ballot election, the Town Council directs the designated election official named in Section 6 below to file a mail ballot election plan with the Colorado Secretary of State.

Section 5. Election Questions. At the Election, there shall be submitted to the eligible electors of the Town a question or questions regarding various proposed amendments to the Town’s Charter, including but not limited to amendments that would: (1) INCREASE THE ELECTOR THRESHOLD AT WHICH THE TOWN COUNCIL MEMBERSHIP WILL BE INCREASED FROM 1,200 ELECTORS TO 8,000 ELECTORS; (2) REDUCE LIMITATIONS ON THE TOWN’S ABILITY TO APPROPRIATE FUNDS FOR UNANTICIPATED EXPENDITURES; (3) EXTEND THE DEADLINE FOR FILING OF THE TOWN’S ANNUAL AUDIT SO THAT IT IS CONSISTENT WITH STATE LAW; (4) REMOVE LAX COUNCIL MEMBER MEETING ATTENDANCE REQUIREMENTS AND DELEGATE THIS RESPONSIBILITY TO TOWN COUNCIL; (5) PROVIDE MORE FLEXIBILITY TO THE COUNCIL IN ADDRESSING POTENTIAL FUTURE BUDGET SHORTFALLS; (5) REMOVE ONE YEAR WAITING PERIOD REQUIRED BETWEEN THE END OF A TERM AS A COUNCIL MEMBER AND SUBSEQUENT EMPLOYMENT WITH THE TOWN; (6) AMEND THE PROCEDURAL REQUIREMENTS FOR COUNCIL REMOVAL OF THE TOWN MANAGER AND TOWN COMMISSION MEMBERS FROM THEIR POSITIONS; AND (7) INCORPORATE VARIOUS ADMINISTRATIVE AND GRAMMATICAL CHANGES RECOMMENDED BY TOWN STAFF AND CONSULTANTS.

Section 6. Designated Election Official Appointment. Larimer County Clerk and Recorder is hereby appointed as the Designated Election Official of the Town for purposes of
performing acts required or permitted by law in connection with the election. November elections must be county-coordinated under § 1-7-116, C.R.S., which requires the county clerk and recorder to coordinate elections when more than one overlapping political subdivision holds an election on the same day in November. See also, § 1-1-104(6.5). State elections overlap on November 3, 2015, therefore pursuant to § 1-7-116, C.R.S., the Larimer County Clerk and Recorder is required to be the Designated Election Official.

Section 7. Miscellaneous.

Without limiting the foregoing, the following specific determinations also are made:

a. The Town Council hereby directs the Town Attorney to approve the final form of the ballot to be submitted to the eligible electors of the District and authorizes the Designated Election Official to certify those questions and take any required action therewith.

b. The Board hereby directs the Town Clerk to oversee the general conduct of the Election and authorizes the Designated Election Official to take all action necessary for the proper conduct thereof and to exercise the authority of the Town Council in conducting the Election, including, but not limited to appointment, training and setting compensation of election judges and a board of canvassers, as necessary; all required notices of election, including notices required pursuant to TABOR; printing of ballots; supervision of the counting of ballots and certification of election results; and all other appropriate actions.

c. If any section, subsection, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause, or provision shall in no manner affect any remaining provisions of this Ordinance, the intent being that the same are severable.

d. All orders, resolutions, ordinances or regulations of the Town, or parts thereof, inconsistent with this Ordinance are hereby repealed to the extent only of such inconsistency.

Section 8. Effective Date. This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter.
TOWN OF TIMNATH, COLORADO

__________________________
Jill Grossman-Belisle, Mayor

ATTEST:

__________________________
Milissa Peters, CMC
Town Clerk
TOWN COUNCIL COMMUNICATION

Meeting Date: 8/4/2015

Item: Skeebo Subdivision for 4025 Kern Street

Presented by:
Matt Blakely
Town Planner

Ordinance □
Resolution √
Discussion □
For Information □

EXECUTIVE SUMMARY: The project is proposed at 4025 Kern Street. The proposal is for a Minor Subdivision of the lot to change it from one lot to three lots. The first two lots will face Kern St with the third lot having alley access with an access easement between lots one and two off of Kern. Lot one is 4,133 Sq. Ft. while Lot 2 is 5,000 Sq. Ft. and Lot 3 is 8,220 Sq. Ft. The proposal for the three lots will be single family dwelling units. Proper utility connections will be required on all three Lots before any development can occur.

Resident Comments:

The Town received one resident email and is attached to this packet. There was a public comment brought up at the Planning Commission Hearing on 8/4/15. Del Miller at 4005 Kern Street had concerns that were relative to parking and congestion if the use converts to business.

PLANNING COMMISSION ACTION ON 8/4/2015:
Planning Commission made a motion to recommend approval of the Minor Subdivision to the Timnath Town Council on 8/4/2015. That motion passed by a unanimous vote of 5 in favor and 0 opposed.

KEY POINTS/SUPPORTING INFORMATION:

Owner: Steve Whittall
Applicant: Aubrey Carson

Legal Description/address: 4025 Kern Street
Application Type: Minor Subdivision  Case Number: MS-2015-002

Parcel Size (square feet): 17,383  Building total (SF): N/A

Existing Zoning: B
Proposed Zoning: B
Existing Land Use: Single-Family Residential
Proposed Land Use: Single-Family Residential

Process Schedule

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Acceptance of Application | 4/8/2015
---|---
Referral Agency Notification | Referral comments were due by 5/1/2015 | 4/20/2015
Comments Issued | 5/8/2015
2nd Submittal | 5/29/2015
2nd Submittal Comments | 6/19/2015
3rd Submittal | 6/26/2015
Planning Commission | 8/4/2015
Town Council | 8/18/2015

SERVICES:
- **Water:** Fort Collins – Loveland Water District
- **Sewer:** South Fort Collins Sanitation District
- **Fire:** Poudre Fire Authority
- **Electric:** Xcel

Adjacent Zoning/Land Uses:

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<tr>
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</tr>
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</table>

Application Description:

Site Location & Layout:
The project is proposed at 4025 Kern Street. The proposal is for a Minor Subdivision of the lot to change it from one lot to three lots.

The rezoning application conforms to the requirements set forth in section 16.4.8.C in the Timnath Land Use Code.

A. Minor Subdivision Plat Review Criteria. The Town shall use the following criteria to evaluate the applicant’s request:

1. The minor subdivision plat is in compliance with this Code and with the Comprehensive Plan. Response: The minor subdivision is in compliance with the Land Use Code and Comprehensive Plan. The Comprehensive Plan calls for the lot to be a Downtown Core designation which relates to a Business zoning which is currently what the property is zoned. The Business zoning encourages the development and expansion of the existing Town business area by providing a concentration and mixture of civic, office,
**retail, restaurant, housing and cultural land uses.**

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**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, Timnath Post Office, Xcel

*Returned with no comments:* Safebuilt, Larimer County Department of Natural Resources, Larimer County Department of Health and Environment

*Returned with comments:* Poudre Fire Authority, Timnath Community Development, Timnath Engineering, Fort Collins/Loveland Water District/South Fort Collins Sanitation District

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**RECOMMENDED MOTION:**

Finding that a complete application was submitted and reviewed in accordance with all applicable Town regulations, the application conforms with the mission and goals of the Timnath Comprehensive Plan, and all criteria outlined in Section 16.4.8.C of the Timnath Land Use Code have been met, I move to recommend approval of the Skeebo Subdivision for 4025 Kern Street, with the following conditions:

1. Allow staff to work with the owner applicant to address minor, non-substantive modifications and unresolved comments prior to final signatures

---

**ATTACHMENTS:**

1. Subdivision Map
2. Poudre Fire Authority Concerns
3. Resident Email
TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 53, SERIES 2015

A REASOLUTION FOR A MINOR SUBDIVISION OF CERTAIN REAL PROPERTY LOCATED AT 4025 KERN STREET

WHEREAS, STEVE WHITTALL, has submitted a request for a minor subdivision of real property within the Town of Timnath more particularly described in Exhibit A (legal description) and Exhibit B (subdivision plat) and attached hereto and incorporated herein by this reference; and

WHEREAS, the minor subdivision was recommended for approval to at a public hearing held by the Town of Timnath Planning Commission on Tuesday, August 4, 2015 with the following conditions:
   a. Allow staff to continue to work with applicant to address all unresolved technical comments to the satisfaction of Town Staff and Referral Agencies.

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

Section 1. Approval
The Minor Subdivision Plat for 4025 Kern St is approved with the following conditions:
   b. Allow staff to continue to work with applicant to address all unresolved technical comments to the satisfaction of Town Staff and Referral Agencies.


TOWN OF TIMNATH, COLORADO

______________________________
Jill Grossman-Belisle, Mayor

ATTEST:

______________________________
Milissa Peters, CMC
Town Clerk
EXHIBIT A

Legal Description of Property Proposed for Minor Subdivision

Lot 23 Less North 8 2/3 feet and all Lot 24, Block 8, Timnath
EXHIBIT B
Minor Subdivision Plat

[attached]
SKEEBO SUBDIVISION

Being a Replat of Lot 24 and all of Lot 23, Except the North 8 2/3 Feet Thereof, Block 8

Town of Timnath, County of Larimer, State of Colorado

Prepared Pursuant to the Northwest Quarter of Section 21, Township 21 North, Range 63 West of the 6th Meridian

LEGEND

PRELIMINARY

VICINITY MAP
TO: Matt Blakley, Town Planner

FROM: Jim Lynxwiler, Fire Protection Technician, Poudre Fire Authority, 970-416-2869

PROJECT: SKEEBO SUBDIVISION Timnath Case Number: MS-2015-001

DESCRIPTION: Subdivide parcel from two lot configuration to three lots.

DATE: May 9, 2015

PFA COMMENTS:

Poudre Fire Authority has no comments relative to the subdivision however, the applicant should be aware that future development on the lots will be subject to code compliance at that time. Pertinent code requirements listed below:

FIRE LANNES

A fire lane is required to within 150’ of all exterior portions of all buildings. I do not anticipate this being a problem for proposed Lots 1 & 2, which can be directly accessed from Kern Street and access distances can be calculated from there. Depending upon the location of the building footprint in Lot 3 however, it is likely that property will be determined out of access and require a fire sprinkler system to offset this deficiency. Please note, access measurements cannot be made from alleys unless the alley is fully developed to local street standards.

- IFC 503.1.1: Fire Lanes shall be provided to within 150’ of all portions of the building, as measured by an approved route around the exterior of the building. When fire lanes cannot be provided, the fire code official is authorized to increase the dimension of 150 feet if the building is equipped throughout with an approved, automatic fire-sprinkler system.

WATER SUPPLY

Fire hydrant spacing and flow must meet minimum requirements based on type of occupancy. I do not anticipate this being a problem for proposed Lots 1 & 2, which are each within 300’ of an existing hydrant. Lot 3 however, appears to be approximately 450’ from the closest hydrant and would be considered out of access for water. A hydrant would have to be located within 300’ of the building or the building will require a fire sprinkler system to offset the deficiency.

- IFC 508.1 and Appendix B: COMMERCIAL REQUIREMENTS: Hydrants to provide 1,500 gpm at 20 psi residual pressure, spaced not further than 300 feet to the building, on 600-foot centers thereafter.
PREMISE IDENTIFICATION
All three lots need to be separately addressed. The addressing of Lot 3 will require monument signage on Kern Street.

- 2012 IFC 505.1: New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible, visible from the street or road fronting the property, and posted with a minimum of six-inch numerals on a contrasting background. Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole or other sign or means shall be used to identify the structure.

OTHER COMMENTS
Other fire department comments may be forthcoming at time of building permit.

Please note: Final Plan requires PFA Fire Marshal signature. Contact Fire Marshal, Bob Poncelow at 970-416-2891 to schedule.
Hello Matt,
Sorry - I had hoped to be at tonight's meeting but have another meeting on top of this one. Can you please share this. I had hoped to speak and perhaps even more strongly voice my concerns about suggested changes and developments in old town. But hopefully this conveys some of the concern.

Thank you and regards,
Scott

4 August 2015

To the Town of Timnath, Planning Commissioners, and Town Council,

My apologies for not being able to attend the Planning Commission meeting, I will attempt to attend the Town Council meeting if this issue is heard there. Dividing the lots in an established neighborhood has an even greater impact on existing residents than the case of new development with greater densities than adjacent developments. Unlike living next to undeveloped property, there is a reasonable expectation that the current density is not going to change. This is especially true when zoning changes were made after many of the residents made their decisions to live in old town.

The future vision of the area is to be a mix of business and residential properties. If the character of the area currently included a mix of residential and business uses or if the intent of the changes would bring compatible business into the old town area, the issue would be different. What is being proposed only increases the population density of the existing residential neighborhood with no benefit. I am very concerned that the proposed changes will deprive the current residents of the environment that they have chosen to make their homes. Ultimately this will drive out those people who have chosen old town because of the small town feel that is unique to this area of Timnath.

Respectfully,
Scott Taylor
4109 Main St. / P.O. Box 92
Timnath, CO 80547
EXECUTIVE SUMMARY: The project is proposed at 5032 5th Avenue. The proposal is for a Minor Subdivision of the lot to change it from one lot to two lots. Lot 1 will be 6,904 Sq. Ft. and Lot 2 will be 4,571 Sq. Ft. The developer is intending to retain the residential use on Lot 2, while Lot 1 may be residential, but has the potential to be a commercial use.

Town is requiring that Lot 1 is deed restricted such that it must have separate water and sewer services prior to any sale of the Lot.

Resident Comments:

The Town received one resident email and is attached to this packet. There was a public comment brought up at the Planning Commission Hearing on 8/4/15. Nancy Crawford at 5017/5025 5th Ave had concerns that were relative to the overdevelopment of Old Town and would rather see the history and feel of Old Town kept the same.

PLANNING COMMISSION ACTION ON 8/4/2015:
Planning Commission made a motion to recommend approval of the Minor Subdivision to the Timnath Town Council on 8/4/2015. That motion passed by a unanimous vote of 5 in favor and 0 opposed.

KEY POINTS/SUPPORTING INFORMATION:

Owner: Laura Olive
Applicant: Aubrey Carson

Legal Description/address: 5032 5th Ave
Application Type: Minor Subdivision   Case Number: MS-2015-002

Parcel Size (square feet): 11,655    Building total (SF): N/A

Existing Zoning: B
Proposed Zoning: B
Existing Land Use: Single-Family Residential
Proposed Land Use: Single-Family Residential
Application Submitted | 4/8/2015
Acceptance of Application | 4/8/2015
Referral Agency Notification | Referral comments were due by 5/1/2015 | 4/20/2015
Comments Issued | 5/8/2015
2nd Submittal | 5/29/2015
2nd Submittal Comments | 6/19/2015
3rd Submittal | 6/26/2015
Planning Commission | 8/4/2015
Town Council | 8/11/2015

SERVICES:
Water: Fort Collins – Loveland Water District
Sewer: South Fort Collins Sanitation District
Fire: Poudre Fire Authority
Electric: Xcel

Adjacent Zoning/Land Uses:

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Application Description:

Site Location & Layout:
The project is proposed at 5032 5th Avenue. The proposal is for a Minor Subdivision of the lot to change it from one lot to two lots.

The rezoning application conforms to the requirements set forth in section 16.4.8.C in the Timnath Land Use Code.

A. Minor Subdivision Plat Review Criteria. The Town shall use the following criteria to evaluate the applicant’s request:

1. The minor subdivision plat is in compliance with this Code and with the Comprehensive Plan. Response: The minor subdivision is in compliance with the Land Use Code and Comprehensive Plan. The
Comprehensive Plan calls for the lot to be a Downtown Core designation which relates to a Business zoning which is currently what the property is zoned. The Business zoning encourages the development and expansion of the existing Town business area by providing a concentration and mixture of civic, office, retail, restaurant, housing and cultural land uses.

**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, Timnath Post Office, Xcel

- **Returned with no comments:** Safebuilt, Larimer County Department of Natural Resources, Larimer County Department of Health and Environment

- **Returned with comments:** Poudre Fire Authority, Timnath Community Development, Timnath Engineering, Fort Collins/Loveland Water District/South Fort Collins Sanitation District

**RECOMMENDED MOTION:**

Finding that a complete application was submitted and reviewed in accordance with all applicable Town regulations, the application conforms with the mission and goals of the Timnath Comprehensive Plan, and all criteria outlined in Section 16.4.8.C of the Timnath Land Use Code have been met, I move to recommend approval of the Skeebo Subdivision for 4025 Kern Street, with the following conditions:

1. Allow staff to work with the owner applicant to address minor, non-substantive modifications and unresolved comments prior to final signatures

**ATTACHMENTS:**

1. Subdivision Map
2. Narrative
3. Engineering Comment
4. Resident Email
TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 54, SERIES 2015

A REASOLUTION FOR A MINOR SUBDIVISION OF CERTAIN REAL PROPERTY
LOCATED AT 5032 5th AVANUE

WHEREAS, LAURA OLIVE, has submitted a request for a minor subdivision of real property within the Town of Timnath more particularly described in Exhibit A (legal description) and Exhibit B (subdivision plat) and attached hereto and incorporated herein by this reference; and

WHEREAS, the minor subdivision was recommended for approval to at a public hearing held by the Town of Timnath Planning Commission on Tuesday, August 4, 2015 with the following conditions:
   a. Allow staff to continue to work with applicant to address all unresolved technical comments to the satisfaction of Town Staff and Referral Agencies.

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

Section 1. Approval
The Minor Subdivision Plat for 5032 5th Avenue is approved with the following conditions:
   b. Allow staff to continue to work with applicant to address all unresolved technical comments to the satisfaction of Town Staff and Referral Agencies.


TOWN OF TIMNATH, COLORADO

__________________________
Jill Grossman-Belisle, Mayor

ATTEST:

__________________________
Milissa Peters, CMC
Town Clerk
EXHIBIT A

Legal Description of Property Proposed for Minor Subdivision

Lot 1, Block 10, Town of Timnath as recorded July 26, 1989 as reception No. 19890033063 and corrected by the Affidavit of Correction recorded August 17, 1989 as reception No. 1989036811, County of Larimer, State of Colorado
EXHIBIT B
Minor Subdivision Plat
[attached]
BELLA SUBDIVISION

Being a Replat of Lot 1, Block 10
Town of Timnath, County of Larimer, State of Colorado

(Preliminary Plat Recorded Pursuant to the Uniform Easement Act of the State of Colorado)

LEGEND

- Residential
- Commercial
- Public Park
- Public Road
- Survey Monument
- Boundaries

SCALE: 1" = 50' (20")

PRELIMINARY
We are interested in your review of the following Project

Project: Bella Subdivision
Case #: MS-2015-001

Location: 5032 5th St

Applicant(s): Aubrey Carson
413 Cormorant Ct
Fort Collins 80521

Owner(s): Laura Olive
125 South Howes St. Ste 120
Fort Collina CO 80521

Phone: 970-481-3366
Fax: Applicant Fax
Email: carsondesign@comcast.net

Phone: 970-227-3990
Fax: Owner Fax
Email: danielle@lauraolive.com

Summary: Subdivide parcel into two separate parcels with single family dwellings

Please Reply By: 5/1/2015

Reply to: Matt Blakely, Town Planner
(mblakely@timnathgov.com)

Phone: (970) 224-3211
Fax: (970) 224-3217

Organization / Agency: Timnath Engineering
Resubmittal Required: Yes / No
Be Included on Comment Review Meeting: Yes / No

Comments:
1. Utility easements are required along the street frontages of lot.
2. Are there separate water and sewer services for each lot?
3. Vicinity map on the report is incorrect
4. Certificate of Ownership & Title Commitment Note blanks need filled in

*Please note that if no response is received by date requested, it is assumed there are no comments on the proposal.

This application has been sent to you for your review and comment. Any comments or issues you may consider relevant to this request would be appreciated. If you have any questions regarding the application, please contact the Planner listed above.

Town of Timnath
Phone: (970) 224-3211 Fax: (970) 224-3217
www.TimnathGov.com
4800 Goodman St. Timnath, CO 80547
We propose to subdivide 5032 5th Street from its existing single lot configuration to a two lot configuration.

This proposed subdivision would allow the existing single family residence on the western half of the lot to become a separate property in and of itself. It would also allow the eastern half of the lot “which fronts main street” to be transformed into a mixed use building which would connect to the down town core.

This subdivision would strengthen the comprehensive plans vision of down town Timnath as a compact core of mixed use residential and commercial uses with a pedestrian scale.

By maintaining the western half of the lot as a single family residence it would also provide a connection to the other single family lots in the neighborhood.
From: Scott Taylor <scott.in.timnath@gmail.com>  
Date: August 4, 2015 at 3:38:03 PM MDT  
To: Matt Blakely <MBlakely@timnathgov.com>  
Subject: sub-division

Hello Matt,

Sorry - I had hoped to be at tonight's meeting but have another meeting on top of this one. Can you please share this. I had hoped to speak and perhaps even more strongly voice my concerns about suggested changes and developments in old town. But hopefully this conveys some of the concern.

Thank you and regards,
Scott

4 August 2015

To the Town of Timnath, Planning Commissioners, and Town Council,

My apologies for not being able to attend the Planning Commission meeting, I will attempt to attend the Town Council meeting if this issue is heard there. Dividing the lots in an established neighborhood has an even greater impact on existing residents than the case of new development with greater densities than adjacent developments. Unlike living next to undeveloped property, there is a reasonable expectation that the current density is not going to change. This is especially true when zoning changes were made after many of the residents made their decisions to live in old town.

The future vision of the area is to be a mix of business and residential properties. If the character of the area currently included a mix of residential and business uses or if the intent of the changes would bring compatible business into the old town area, the issue would be different. What is being proposed only increases the population density of the existing residential neighborhood with no benefit. I am very concerned that the proposed changes will deprive the current residents of the environment that they have chosen to make their homes. Ultimately this will drive out those people who have chosen old town because of the small town feel that is unique to this area of Timnath.

Respectfully,
Scott Taylor
4109 Main St. / P.O. Box 92
Timnath, CO 80547
**EXECUTIVE SUMMARY:** The Agreement is an amendment to a previously approved subdivision improvement agreement (SIA) that establishes obligations of Developer to provide certain public improvements and landscaping necessitated by the proposed development of Serratoga Falls Filing 2 and future filings.

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

**KEY POINTS/SUPPORTING INFORMATION:**

This Agreement:

- Is substantially in the form of the Town’s template SIA.
- Provides for developer construction of public improvements including but not limited to all potable and non-potable waterlines, sewer lines, fire hydrants, potable and non-potable water or sewer distribution facilities, irrigation facilities, drainage structures, paved streets, including curbs, sidewalks, gutters and necessary appurtenances, abutting streets, and other offsite improvements to account for impacts which will be generated by the proposed uses of the property.
- Provides for developer construction of trails in accordance with the Town’s PROST Plan.
- Provides for developer installation and maintenance of landscaping.
- Provides for a Park Fee-in-Lieu payment of $1,567 per lot, half of which is due in bulk at recordation of the plat, and half of which is due at building permit application.
- Provides for a road improvement deposit with the Town of $5,000 per lot, due at building permit, to ensure adequate funding for road improvements that will be warranted in subsequent phases of the project. These deposits are in addition to the 125% Completion Security that will be required as public improvements, including street improvements, are constructed.
- Acknowledges that future impact fees to be adopted by the Town will be imposed in lieu of per-lot annexation fees provided for in 2006 Annexation Agreement.

**ADVANTAGES:** Provides for the cooperative agreement to provide certain public improvements and landscaping necessitated by the proposed development of the Property.
**DISADVANTAGES:** Development will require increased municipal services.

**FINANCIAL IMPACT:** The likely financial impact of the project is anticipated to be positive, as the project is anticipated to generate additional property tax base, and the impact fees to be paid by the Developer are intended to offset the increase in municipal services costs associated with the project.

**RECOMMENDED MOTION:** I move approval of Resolution No. 55, Series 2015 approving An Amended and Restated Subdivision Improvement Agreement For Serratoga Falls Filing No. 2 and Future Filings between the Town of Timnath and Serratoga Falls, LLC.

**ATTACHMENTS:**
1. Resolution
2. Agreement
TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 55, SERIES 2015

A RESOLUTION APPROVING THE AMENDED AND RESTATED SUBDIVISION IMPROVEMENT AGREEMENT FOR SERRATOGA FALLS FILING NO. 2 AND FUTURE FILINGS

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 SUBDIVISION IMPROVEMENT AGREEMENT FOR SERRATOGA FALLS FILING NO. 2 AND FUTURE FILINGS between the TOWN OF TIMNATH and SERRATOGA FALLS, LLC (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.


TOWN OF TIMNATH, COLORADO

________________________________________
Jill Grossman-Belisle, Mayor

ATTEST:

________________________________________
Milissa Peters, CMC
Town Clerk
EXHIBIT A

AGREEMENT
THIS AGREEMENT made as of this 11th day of August, 2015 by and between TOWN OF TIMNATH, COLORADO, a Colorado municipal corporation (the “Town”); and Serratoga Falls, LLC (the “Developer”). Collectively, the Town and the Developer are referred to herein as the “Parties”.

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. 4-2005, adopted on June 1, 2005, and is subject to the terms and conditions of that certain Annexation and Development Agreement for the Smith-Bassett Property between the Town and Majestic Investment Group, LLC, dated as of June 1, 2005, and assigned to Developer on May 20, 2013, and recorded against the Property in the Larimer County Real Property Records on August 11, 2005, at Reception No. 2005-0067349 (collectively, the “Annexation Agreement”).

C. On July 28, 2015, the Town Council 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. 51, Series 2015, the final plat for Serratoga Falls Filing No. 2.

D. The approval of any final plat for the Property is 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.

E. 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 Serratoga Falls, 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 described in this agreement and shown on the Landscaping Plan attached hereto as Exhibit D and G, including the cost thereof.

E. “Final Plat” shall refer to any “Serratoga Falls Subdivision” plat filing or amendment previously approved or approved in the future by the Town Council and that has been or will be submitted in connection with any given Phase of development of the Property. However, this definition shall not include or apply to Serratoga Falls Filing No. 1 and the parties agree that Serratoga Falls Filing No. 1 shall not be governed by the terms of this Agreement.

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

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

H. “Phases” shall refer to development of the Property in up to five (5) separate phases, in accordance with the Phase Plan attached hereto as Exhibits E and F. Exhibits B-H, inclusive, attached hereto and incorporated herein by reference, identifying Public Improvements and Landscaping, are each separated into the appropriate Phase. It is assumed that all Phases shall be constructed in sequential numerical order. If Phases are not constructed in sequential order, any Public Improvements and Landscaping tied to a Phase that is being passed over nonetheless may, upon the Town’s determination in its reasonable discretion that
such Public Improvements and Landscaping are necessary for the Phase being constructed, be required as if the Phases are being constructed in sequential order.

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

J. “Public Improvements” shall refer to those facilities described in this Agreement and the Exhibits hereto, and shall include but not be limited to all potable and non-potable waterlines, sewer lines, fire hydrants, potable and non-potable water (if required) or sewer distribution facilities, irrigation facilities, drainage structures, paved streets, including curbs, sidewalks, gutters and necessary appurtenances, as shown on the Final Plat for each Phase and the associated construction documents.

K. “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, the Final Plat, and the zoning for the Property. The Parties agree and acknowledge that the official zoning map as described in Ordinance No. 4-2005 adopted by the Town on June 1st, 2005, and recorded in the Larimer County Real Property Records on August 11, 2005, at Reception No. 2005-0067349, 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.

A. Fees in Lieu of Park Land Dedication: Not withstanding any provisions in the Town Code to the contrary, Developer and Town agree that a fee in lieu of dedication of park land of $1,567.50 per lot shall be paid by the Developer to the Town, and that 50% of such fee ($783.75 per lot) shall be due upon recordation of the plat for the applicable filing on a bulk basis for all lots in such filing, and the remaining 50% of such fee shall be due on a per-lot basis upon request for building permit. Payment of the above-referenced fee shall satisfy Developer’s regional park land dedication requirement, and such park land dedication fee in lieu shall not be increased in the event the Town adopts changes regarding such fee, regardless of Section 4.C. below.

B. Road Improvements Deposit: In order to ensure sufficient funds are available to finance abutting road improvements (as set forth on Exhibit C) that will be warranted as future Phases are initiated, Developer agrees to deposit in escrow with the Town a road improvements fee of $5,000 per lot, to be due upon application for building permit. The deposited funds may be drawn down: (1) by the Developer for the purpose of constructing such abutting road improvements (as set forth in Exhibit C) after obtaining written administrative approval from the Town, such approval to be consistent with
Exhibit C and the Approved Plans; or (2) upon failure of Developer to construct such improvements as required as part of the construction of the applicable future Phase, by the Town for the purpose of constructing such improvements. The Town shall not draw on the deposited road improvement funds until after: (1) Town has provided written notice to Developer of Developer’s failure to construct said improvements in compliance with Town’s construction standards; and (2) Town has provided Developer with a reasonable opportunity to cure such failure.

C. Impact Fees in lieu of Annexation Fee: Developer acknowledges that Town has provided notice of its intent to adopt revisions to Town’s Land Use Code, including the addition of or increase in various impact fees that are currently imposed by the Town, and that such impact fees, upon adoption, shall apply to the lots in Filing 2 and future filings (on a consistent basis with other lots within the Town). These fees shall include a town-wide park improvements impact fee. In recognition that there is significant overlap between the intent of the additional impact fees anticipated to be adopted by the Town and the $3,500 per/lot Annexation Fee (the “Per-Lot Annexation Fee”) provided for in the above-referenced Annexation Agreement, the Town hereby waives the Per-Lot Annexation Fee.

5. Completion of Public Improvements and Landscaping. Developer shall install all Public Improvements and Landscaping in compliance with the requirements of this Agreement at Developer’s expense. Toward this end, Developer is authorized to coordinate with a metropolitan district or districts to provide Public Improvements but Developer shall retain primary responsibility for all Public Improvements. Any metropolitan districts are separate entities and are not parties to this Agreement. The Public Improvements and Landscaping required by this Agreement and shown on the Final Plat for each Phase and associated construction documents, are set forth on the Exhibits hereto, which Exhibits shall be supplemented as future plats are processed. The anticipated costs of the Public Improvements and the Landscaping are included in line-item format on the Exhibits hereto, as applicable. Developer acknowledges these costs are estimates and the actual costs of such Public Improvements and Landscaping may vary between approval of this Agreement and construction of the applicable Public Improvements and Landscaping. All Public Improvements and Landscaping covered by this Agreement shall be constructed in accordance with the Final Plat for each Phase 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 Public Improvements and Landscaping (collectively, the “Approved Plans”).

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 East Larimer County Water District (the “Water District”), and for the purpose of securing sanitary sewer services to the Property to be provided by Boxelder 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 but excluding Landscaping, irrigation, 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, irrigation, 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 eight (8) 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 within a particular Phase of the Property, furnish Town an irrevocable sight draft letter of credit or other security reasonably acceptable to Town (“Completion Security”) to secure the completion of Public Improvements required by this Agreement 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 twenty-five percent (125%) 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. Upon provision of such Completion Security to Town in a manner acceptable to Town for the applicable Phase, building permits may be issued by Town within such Phase. 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 third party claims under common law, regardless of initial or Final Acceptance thereof.

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 Approved Plans. At such time, Developer shall make all corrections necessary to bring the Public Improvements into conformity with such Approved Plans. 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 and the applicable Warranty Security, 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 Letter”). Initial Acceptance for any Phase shall be deemed to have occurred upon the issuance of the applicable Initial Acceptance Letter. The two (2) year Warranty Period (the “Warranty Period”) for the applicable Phase shall commence on the date set forth in set forth in the Initial Acceptance letter. 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. The letter of Final Acceptance shall set forth the date of Town Council approval. 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 plans 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 recodentation 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 the applicable Exhibits. In addition, Developer shall construct any trails designated on the Property by the Town Parks, Recreation, Open Space, and Trails Master Plan, dated May 2011, as amended and updated from time to time (the “PROST Plan”) in compliance with all then-required width, materials, and thickness requirements.

18. **Improvements to Abutting Streets and Other Offsite Improvements.** Exhibit C sets forth the obligations of Developer for Phase by Phase improvements 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 through the date of Final Acceptance; 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’s indemnity obligations under this Section 20 shall run through the expiration of all applicable statutes of limitations commencing upon the issuance of Final Acceptance. 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, during the construction of Public Improvements and through the date of Final Acceptance, 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 per occurrence cap 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, provided such individuals are acting within the ordinary scope of their duties to the Town, 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 any 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
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 Town Council at a public meeting. This Agreement, all Final Plats, 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 reasonable 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 for Filing No. 2. The exhibits to this Agreement shall be supplemented to include future filings concurrently with recordation of the Final Plat for each future filing.

*(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

SERRATOGA FALLS, LLC
A Colorado limited liability company

By: ________________________________
Title: ________________________________

1229.0400(Serratoga)_682202
EXHIBIT LIST

The following Exhibits are a part of and incorporated within the Subdivision Improvement Agreement for Serratoga Falls Filing No. 2 and Future Filings.

EXHIBIT A  Property Description
EXHIBIT B  Public Improvement Schedule By Phase including Costs in Line-Item Format
EXHIBIT C  Abutting And Offsite Public Improvements By Phase Including Costs In Line-Item Format
EXHIBIT D  Landscape Plan By Phase Including Costs In Line-Item Format
EXHIBIT E  On-Site Phasing Plan
EXHIBIT F  Off-Site Phasing Plan
EXHIBIT G  Landscape Phasing
EXHIBIT H  Trail Plan By Phase
EXHIBIT A
Property Description

Recorded Plat to Substituted upon Recordation
FINAL PLAT OF SERRATOGA FALLS - SECOND FILING
A REPLAT OF TRACTS B, D, E, AND F, SERRATOGA FALLS - FIRST FILING, LOCATED IN SECTION 16, TOWNSHIP 7 NORTHCORNER RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF TIMNATH, COUNTY OF LARIMER, STATE OF COLORADO
SERRATOGA FALLS - SECOND FILING

FINAL PLAT OF
SERRATOGA FALLS - SECOND FILING
A REPLAT OF TRACTS B, D, E AND F, SERRATOGA FALLS - FIRST FILING, LOCATED IN SECTION 14, TOWNSHIP 7 NORTH,
RANGE 68 WEST OF THE 6th PRINCIPAL MERIDIAN, TOWN OF TIMNATH, COUNTY OF LARIMER, STATE OF COLORADO
FINAL PLAT OF
SERRATOGA FALLS - SECOND FILING
A REPLAT OF TRACTS B, D, E AND F, SERRATOGA FALLS - FIRST FILING, LOCATED IN
SECTION 14, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,
TOWN OF TIMNATH, COUNTY OF LARIMER, STATE OF COLORADO

NOTE: THE SCALE FOR SHEETS 14 & 15 HAS BEEN
CHANGED TO 1"=100' FOR CLARITY PURPOSES

LEGEND

NORTH

PROSPECT ROAD (LARIMER COUNTY ROAD 44)

REPRINTED BY

NORTHERN
ENGINEERING

Sheet 15
Of 12 Sheets
EXHIBIT B
Public Improvement Schedule By Phase Including Costs In Line-Item Format
### SERRATOGA FALLS - SECOND FILING

**JUNE 26, 2015**

**On-Site Utilities**

<table>
<thead>
<tr>
<th>Unit</th>
<th>Quantity</th>
<th>Unit Cost</th>
<th>Project Total</th>
</tr>
</thead>
<tbody>
<tr>
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<tr>
<td>8” Valves</td>
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<td>$91,062</td>
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<td>Irrigation</td>
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<td>$196,772</td>
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<td>$91,062</td>
<td>$91,062</td>
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<td>Concrete Pond Outlet</td>
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<td>$55,000</td>
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<tr>
<td>15” RCP</td>
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<td>30” RCP</td>
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<td>15’’ PCC</td>
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<td>48’’ FES</td>
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<tr>
<td>Single Combination Inlet</td>
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<td>$4,705</td>
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<td>Triple Combination Inlet</td>
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**Total On-Site Utilities**

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<tbody>
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<td>787,768</td>
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<td>2,199,706</td>
<td>$3,207,157</td>
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**On-Site Paving**

<table>
<thead>
<tr>
<th>Unit</th>
<th>Quantity</th>
<th>Unit Cost</th>
<th>Project Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>18” Vertical Curb &amp; Gutter</td>
<td>15.00</td>
<td>$15,000</td>
<td>$15,000</td>
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<tr>
<td>30” Vertical Curb &amp; Gutter</td>
<td>16.00</td>
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<td>$16,000</td>
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<tr>
<td>8” Rollway Curb &amp; Gutter</td>
<td>15.00</td>
<td>$15,000</td>
<td>$15,000</td>
</tr>
<tr>
<td>8” Concrete Trench</td>
<td>30.00</td>
<td>$30,240</td>
<td>$30,240</td>
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<tr>
<td>6” Soft Trench</td>
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<td>$12,000</td>
<td>$12,000</td>
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<tr>
<td>Asphalt (Local Res.)</td>
<td>22.55</td>
<td>$22,550</td>
<td>$22,550</td>
</tr>
<tr>
<td>Asphalt (Collector)</td>
<td>32.15</td>
<td>$32,150</td>
<td>$32,150</td>
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</table>

**Total On-Site Paving**

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Total Cost</th>
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<tbody>
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<td>1,029,193</td>
<td>$303,359</td>
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<td>392,905</td>
<td>471,775</td>
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<td>2,651,970</td>
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**On-Site Improvements**

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<td>2,054,485</td>
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EXHIBIT C
Abutting and Offsite Public Improvements Including Costs by Phase in Line-Item Format
## Off-Site Utilities Schedule of Values

**Based on Civil Design plans prepared by Northern Engineering dated April 25, 2015**

<table>
<thead>
<tr>
<th>Off-Site Utilities</th>
<th>Unit</th>
<th>Unit Cost</th>
<th>Phase 1</th>
<th>Phase 2</th>
<th>Phase 3</th>
<th>Phase 4</th>
<th>Phase 5</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td>Water</td>
<td></td>
<td></td>
<td>TOTAL COST</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Water main (12&quot; pvc)</td>
<td>LF</td>
<td>57.74</td>
<td>2,333</td>
<td>134,692</td>
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<td>934</td>
<td>53,937</td>
<td>3,267</td>
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<tr>
<td>Fire Hydrants</td>
<td>EA</td>
<td>8,740.84</td>
<td>-</td>
<td>1</td>
<td>8,750</td>
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<td>Waterline Lowerings</td>
<td>EA</td>
<td>9,015.00</td>
<td>-</td>
<td>3</td>
<td>5,925</td>
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<td>-</td>
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<tr>
<td>12&quot; Sockets/Fittings</td>
<td>EA</td>
<td>1,675.00</td>
<td>-</td>
<td>2</td>
<td>3,955</td>
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<td>-</td>
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<td>Trape/Cut-off Tee</td>
<td>EA</td>
<td>10,442.97</td>
<td>-</td>
<td>-</td>
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<td>-</td>
<td>1</td>
<td>10,443</td>
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<td>12&quot; Valves</td>
<td>EA</td>
<td>5,046.34</td>
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<td>4</td>
<td>10,146</td>
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<tr>
<td>Storm</td>
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<td>TOTAL COST</td>
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<tr>
<td>6'x12' Box Culvert</td>
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<td>-</td>
<td>168</td>
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<td>8' Headwalls</td>
<td>EA</td>
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### Off-Site Paving

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<tr>
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<th>Project Total</th>
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</thead>
<tbody>
<tr>
<td>Full Depth Asphalt (6&quot; Asph/8&quot; ABC)</td>
<td>SF</td>
<td>14.20</td>
<td>-</td>
<td>8,053</td>
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<td>14,053</td>
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<tr>
<td>Asphalt Overlay (2&quot; min.)</td>
<td>SF</td>
<td>10.60</td>
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<tr>
<td>Total Off-Site Paving</td>
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<td>$213,511</td>
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### Total Off-Site Improvements

<table>
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EXHIBIT D
Landscape Plan by Phase Including Costs in Line-Item Format
<table>
<thead>
<tr>
<th>Landscaping</th>
<th>Unit</th>
<th>Unit Cost</th>
<th>Quantity</th>
<th>PHASE 1 TOTAL COST</th>
<th>PHASE 2 TOTAL COST</th>
<th>PHASE 3 TOTAL COST</th>
<th>PHASE 4 TOTAL COST</th>
<th>PHASE 5 TOTAL COST</th>
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<td>27,466</td>
<td>11,535.72</td>
<td>318,262</td>
<td>133,670.04</td>
<td>42,525</td>
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<tr>
<td>Irrigation System - Shrub Beds</td>
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<td>39,836</td>
<td>16,731.12</td>
<td>2,078</td>
<td>872.76</td>
<td>5,486</td>
<td>2,394.12</td>
<td>2,409</td>
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<td>Trees (with prep)</td>
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<td>12,950.00</td>
<td>139</td>
<td>48,650.00</td>
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<td>Shrub &amp; Ornamental Grasses (with prep)</td>
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<td>146</td>
<td>6,570.00</td>
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<td>13,590.00</td>
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<td>100.00</td>
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<td>63,557.52</td>
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<td>1.50</td>
<td>2,460</td>
<td>3,698.00</td>
<td>181</td>
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<td>363.26</td>
<td>5,486</td>
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<td><strong>Total Landscaping</strong></td>
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Serratoga Falls - Filing 2
Subdivision Improvement Agreement Exhibit D
Landscape Schedule of Values
Based on Landscape plans prepared by TB Group dated April 3, 2015
EXHIBIT F
Off-site Phasing Plan
EXHIBIT G
Landscape Phasing Plan
EXHIBIT H
Trails Phasing Plan
TOWN OF TIMNATH MODEL

Multiple DISTRICT AMENDED AND RESTATED SERVICE PLAN

MODEL SERVICE PLAN
FOR

SERRATOGA FALLS METROPOLITAN DISTRICT NOS. ____NO. 2

TOWN OF TIMNATH, COLORADO

Prepared
by

[NAME OF PERSON OR ENTITY]
[ADDRESS]
[ADDRESS]

[DATE]
ICENOGLLE SEAVER POGUE, P.C.
4725 S. MONACO ST., SUITE 225
DENVER, COLORADO 80237

AUGUST _____, 2015
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EXHIBIT C-1  Initial District Boundary Map
EXHIBIT C-2  Inclusion Area Boundary Map
EXHIBIT D-1  Exclusion Area Boundary Map
EXHIBIT D-2  Legal Description of Exclusion Area Boundaries
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EXHIBIT E  TDA-F  Term Sheet with NBH Bank
EXHIBIT G  Intergovernmental Agreement [if applicable] between the District and Serratoga Falls Metropolitan District Nos. 1 and/or 3
EXHIBIT F  Public Improvements
I. INTRODUCTION

On March 29, 2006, the Town Council of the Town of Timnath approved the Consolidated Service Plan for Serratoga Falls Metropolitan District Nos. 1, 2, and 3. Serratoga Falls Metropolitan District No. 2 was organized, concurrently with Serratoga Falls Metropolitan Districts Nos. 1 and 3, by the recording, in the Larimer County Clerk and Recorder’s Office, of an Order and Decree Creating Serratoga Falls Metropolitan District No. 2, as amended. After the platting of eighty-three (83) lots in the first phase of development in the District, the developer that proposed the formation of the Districts fell into financial distress, and the remaining property owned by the developer in the Districts was foreclosed and subsequently sold to a new developer. Due to new development plans for the remaining property within the District, the District is amending and restating, in part, the original Service Plan with this Amended and Restated Consolidated Service Plan for Serratoga Falls Metropolitan District No. 2. A separate Amended and Restated Service Plan will be submitted for Serratoga Falls Metropolitan Districts Nos. 1 and 3.

It is anticipated that the new developer will seek to exclude the Exclusion Area Boundaries from the District upon the Town’s approval of the amendments to the Service Plan for the District and for Serratoga Falls Metropolitan Districts Nos. 1 and 3, as discussed in Section III of this Service Plan.

A. Purpose and Intent.

(i) Enabling Authority. All Public Improvements to serve the Service Area have been completed. It is the intention of the Town that this Service Plan grants authority to the Districts to construct some or all of the Public Improvements authorized herein. If Districts elect not to provide certain of the existing Public Improvements for the benefit of the District and its inhabitants and taxpayers, the Districts may elect to provide additional Public Improvements as may be needed to benefit the Service Area in the future, which may be provided in accordance with an Approved Development Plan or other agreement with the Town, the Districts shall notify the Town in writing of such election whereupon the Town shall have 90 days to provide a letter to the Districts advising the Districts of the obligation to seek a formal amendment to this Service Plan, or, in the alternative, advising that such election does not constitute a material modification hereof. If the Town determines that such election does not constitute a material modification hereof, the Districts shall submit a written modification of this Service Plan to the Town for administrative approval as a non-material modification whereupon the authority of the Districts to provide such Public Improvements shall be deemed stricken from this Service Plan. In all events, the Town and the Districts acknowledge that the Districts are an independent unit of local government, separate and distinct from the Town, and, except as may otherwise be provided for by State or local law or this Service Plan, its activities are subject to review by the Town only insofar as they may deviate in a material manner from the requirements of the Service Plan.

(ii) General Purpose. It is intended that the Districts will provide a part or all of the operations and maintenance services for the existing Public Improvements constructed for the use and benefit of all anticipated inhabitants and taxpayers of the District. The primary
The purpose of the District will be to finance the construction of the completed Public Improvements and not to provide long-term operations and maintenance of Public Improvements, except as specifically authorized herein or in an intergovernmental agreement with the Town.

B. Need for the District

There are currently no other governmental entities, including the Town, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction, installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.

Prior to the foreclosure of the property by the original developer, the Districts had issued certain notes to the developer to evidence the District’s reimbursement obligation for approximately $8 million in public improvements constructed by the developer. As a result of the foreclosure, NBH Bank became the holder of the notes. The Districts entered into negotiations with NBH Bank, and as a result, the District will issue a new obligation to NBH Bank for approximately $800,000, as further discussed in Section VI.A. of this Service Plan, and all prior notes shall be voided. There is continued need for the District to finance its reimbursement obligation to NBH Bank and to provide limited operation and maintenance of the Public Improvements.

C. Objective of the Town Regarding District’s Service Plan

The Town’s objective in approving the Service Plan for the District is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation, financing of Debt for the Public Improvements, and redevelopment for part or all of the operations and maintenance of the Public Improvements from the proceeds of Debt to be issued by the District. All Debt is expected to be repaid by taxes imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term for residential properties, and at a maximum mill levy no higher than the Maximum Aggregate Mill Levy for commercial and residential properties, and/or repaid by Fees, as long as such Fees are not imposed upon or collected from Taxable Property owned or occupied by an End User for the purpose of creating a capital cost payment obligation as further described in Section V.A. 11.10. Debt which is issued within these parameters and, as further described in the Financial Plan, will insulate property owners from excessive tax and Fee burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of said Debt.

This Service Plan is intended to establish a limited purpose for the District and explicit financial constraints that are not to be violated under any circumstances. The primary purpose is to provide for the financing of the Public Improvements and limited operational and maintenance of the Public Improvements associated with development and regional needs. Operational activities in connection with any trails and related amenities, or other Public Improvements not dedicated to another entity will be allowed subject to entering into an intergovernmental agreement with the Town.
It is the intent of the DistrictsDistrict to dissolve upon payment or defeasance of all Debt incurred or upon a court determination that adequate provision has been made for the payment of all Debt and for continuation of any operations approved in an intergovernmental agreement. The DistrictsDistrict may be allowed to continue certain limited operations and to retain those powers necessary to impose and collect taxes or fees to pay for costs and functions if permitted by intergovernmental agreement with the Town.

The DistrictsDistrict shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from Fees or from tax revenues collected from a mill levy which shall not exceed the Maximum Debt Mill Levy and which shall not exceed the Maximum Debt Mill Levy Imposition Term. It is the intent of this Service Plan to assure to the extent possible that no property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy in amount and that no property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy Imposition Term in duration even under bankruptcy or other unusual situations. Generally, the cost of Public Improvements that cannot be funded within these parameters are not costs to be paid by the DistrictsDistrict.

II. DEFINITIONS

II. In this Service Plan, the following terms shall have the meanings indicated below, unless the context hereof clearly requires otherwise:

Approved Development Plan: means a Subdivision Improvement Agreement or other process established by the Town for identifying, among other things, Public Improvements necessary for facilitating development for property within the Service Area as approved by the Town pursuant to the Town Code and as amended pursuant to the Town Code from time to time.

Board: means the board of directors of each the District.

Bond, Bonds or Debt: means bonds or other obligations for the payment of which a District has promised to impose an ad valorem property tax mill levy, and/or collect Fee revenue.

Covenant Enforcement and Design Review Services: means those services authorized under Section 32-1-1004(8), C.R.S.

District: means any one of the Districts Serratoga Falls Metropolitan District No. 2.

Districts: means District No. 1 and the District and Serratoga Falls Metropolitan Districts Nos. _____, _____, _____ (fill in number of each District), 1 and 3, collectively.

End User: means any owner, or tenant of any owner, of any taxable improvement within the DistrictsDistrict who is intended to become burdened by the imposition of ad valorem property taxes subject to the Maximum Mill Levy. By way of illustration, a resident
A homeowner, renter, commercial property owner, or commercial tenant is an End User. The business entity that constructs homes or commercial structures is not an End User.

**Exclusion Area Boundaries**: means the boundaries of the real property proposed for exclusion from the boundaries of the District as described in **EXHIBIT D-2** attached hereto and as depicted in the Exclusion Area Boundary Map.

**Exclusion Area Boundary Map**: means the map attached hereto as **EXHIBIT D-1** depicting the property proposed for exclusion from the boundaries of the District.

**External Financial Advisor**: means a consultant approved by the Town that: (i) advises Colorado governmental entities on matters relating to the issuance of securities by Colorado governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (ii) shall be an underwriter, investment banker, or individual listed as a public finance advisor in the Bond Buyer’s Municipal Market Place; and (iii) is not an officer or employee of the District and has not been otherwise engaged to provide services in connection with the transaction related to the applicable Debt.

**Fee(s)**: means any fee imposed by the District for services, programs or facilities provided by the District, as described in Section V.A.11.10. below.

**Financial Plan**: means the Financial Plan described in Section VI, which describes (i) how the Public Improvements are to be financed; (ii) how the Debt is expected to be incurred; and (iii) the estimated operating revenue derived from property taxes. In addition to the information in Section VI the Town may require additional financial forecasts and feasibility reports to support the Financial Plan.

**Gallagher Adjustment**: means, if, on or after January 1, 2014, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement, the Maximum Aggregate Mill Levy may be increased or decreased to reflect such changes, such increases and decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the applicable mill levy, as adjusted for changes occurring after January 1, 2014, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

**Inclusion Area Boundaries**: means the boundaries of the area described in the Inclusion Area Boundary Map which depicts only property contained within the Project as outlined in the Approved Development Plan.

**Inclusion Area Boundary Map**: means the map attached hereto as **Exhibit C-2**, describing the property proposed for inclusion within one, but not any more than one, of the boundaries of the Districts.
**Initial District Boundaries:** means the boundaries of the area described in the Initial District Boundary Map, prior to the exclusion of the Exclusion Area Boundaries.

**Initial District Boundary Map:** means the map attached hereto as Exhibit C-1, describing the District's initial boundaries prior to the exclusion of the Exclusion Area Boundaries.

**Maximum Aggregate Mill Levy:** means the maximum mill levy the Districts are permitted to impose for payment of Debt, capital improvements administration, operations, and maintenance expenses as set forth in Section VI.C. below.

**Maximum Debt Mill Levy:** means the maximum mill levy the Districts are permitted to impose for payment of Debt as set forth in Section VI.C below.

**Maximum Debt Mill Levy Imposition Term:** means the maximum term for imposition of a mill levy on a particular property developed for residential uses as set forth in Section VI.D below.

**Maximum Operations and Maintenance Mill Levy:** means the maximum mill levy the Districts are permitted to impose for payment of operations as set forth in Section VI.C. below.

**Project:** means the development or property commonly referred to as Serratoga Falls – First Filing, as amended by the Serratoga Falls – Second Filing, Town of Timnath, County of Larimer, State of Colorado.

**Public Improvements:** means a part or all of the existing or future improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as generally described in the Special District Act and listed on Exhibit F, except as specifically limited in Section V below, to serve the future taxpayers and inhabitants of the Service Area as determined by the Board of the District.

**Service Area:** means the property within the Initial District Boundary Map and the Inclusion Area Boundary Map.

**Service Plan:** means this amended and restated service plan for the District approved by Town Council.

**Service Plan Amendment:** means an amendment to the Service Plan approved by Town Council in accordance with the Town’s ordinance and the applicable state law.

**Special District Act:** means Section 32-1-101, et seq., of the Colorado Revised Statutes, as amended from time to time.

**State:** means the State of Colorado.
Taxable Property: means real or personal property within the Service Area subject to ad-
valorem taxes imposed by the District.

TDA Intergovernmental Agreement: means the intergovernmental agreement with the
Timnath Development Authority the form of which is attached hereto as Exhibit E. (if
applicable)

Town: means the Town of Timnath, Colorado.

Town Code: means the Town Code of the Town of Timnath, Colorado.

Town Council: means the Town Council of the Town of Timnath, Colorado.

III. BOUNDARIES

The area of the Initial District Boundaries includes approximately _______ (____) 371.48
acres and the total area proposed to be included in the Inclusion Area Boundaries is
approximately __________ (____) acres. A legal description of the Initial District Boundaries
and the Inclusion Area Boundaries is attached hereto as Exhibit A. A vicinity map is attached
hereto as Exhibit B. A map of the The Initial District Boundaries - Boundary Map is attached
hereto as Exhibit C-1, and a map of Since the approval of the original Service Plan, the nature
of the proposed development within the Inclusion District’s boundaries has changed. The District
anticipates receiving a petition from the owner of one hundred percent (100%) of the property
located in the Exclusion Area Boundary to exclude such property from the boundaries of the
District. The Exclusion Area Boundary Map is attached hereto as Exhibit D-1. A legal
description of the Exclusion Area Boundaries is attached hereto as Exhibit CD-2. It is
anticipated Upon approval of this Service Plan, the District will be authorized to proceed to adjust
its boundaries to exclude the Exclusion Area Boundary in accordance with the procedures
provided in the Special District Act and this Service Plan without further approval from the
Town, provided that the Districts prior to the District granting a petition for the exclusion of the
Exclusion Area Boundaries from the District, the District and Serratoga Falls Metropolitan
Districts Nos. 1 and/or 3 enter into an intergovernmental agreement to provide for limited
operations and maintenance of public improvements that benefit the District and the property in
the Exclusion Area Boundaries as such agreement is attached hereto as EXHIBIT G.

The District’s boundaries may change from time to time as it undergoes inclusions and
exclusions pursuant to Section 32-1-401, et seq., C.R.S., and Section 32-1-501, et seq., C.R.S.,
subject to the limitations set forth in Section V below.

IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED

VALUATION

The Service

Upon exclusion of the Exclusion Area Boundary, the Service Area will consist of
approximately _______ (____) acres of __________ land. The current 2014 assessed
valuation of the Service Area is $0.00S ________________ for purposes of this Service Plan
and, at build out, is expected to be sufficient to reasonably discharge the Debt under the
Financial Plan. The population of the District after the exclusion of the Exclusion Area

1229.0300 (Model Service Plan - 503808-1)
Boundaries, at build-out is estimated to be approximately two hundred forty-nine (249) people, based on 83 platted lots within the Service Area and three (3) persons per unit.

Approval of this Service Plan by the Town does not imply approval of the development of a specific area within the Districts District, nor does it imply approval of the number of residential units or the total site floor area of commercial or industrial buildings identified in this Service Plan or any of the exhibits attached thereto, unless the same is contained within an Approved Development Plan.

V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES

A. Powers of the Districts District and Service Plan Amendment.

The Districts District shall have the power and authority to provide the Public Improvements and limited operation and maintenance services within and, if pursuant to an Approved Development Plan intergovernmental agreement with Serrataoga Falls Metropolitan Districts Nos. 1 and/or 3, without the boundaries of the Districts District as such power and authority is described in the Special District Act, and other applicable statutes, common law and the Constitution, subject to the limitations set forth herein.

1. Operations and Maintenance Limitation. The purpose of the Districts is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The Districts shall dedicate the Public Improvements for use by the inhabitants and taxpayers of the Service Area have been completed. Streets and related traffic and safety protection improvements have been dedicated to the Town or other appropriate jurisdiction in a manner consistent with the Approved Development Plan and other rules and regulations of the Town and applicable provisions of the Town Code. The Districts. The District shall operate and maintain all trails and related amenities within the Districts and the Inclusion Area Boundary District pursuant to an intergovernmental agreement with the Town, which shall be executed at the first meeting of the Districts District after approval of this Service Plan.

Operational activities for other Public Improvements not dedicated to another entity are allowed subject to entering into an intergovernmental agreement with the Town allowing the Town to set minimum standards for maintenance. All parks and trails shall be open to the general public, including Town residents who do not reside in the Districts District, free of charge. Any Fee imposed by the Districts District for access to recreation improvements owned by the Districts District, other than parks and trails, shall not result in Town residents who reside outside the Districts District paying a user fee that is greater than, or otherwise disproportionate to, similar fees and taxes paid by residents of the Districts District. However, the Districts District shall be entitled to impose an administrative Fee as necessary to cover additional expenses associated with use of District recreational improvements, other than parks and trails, by Town residents who do not reside in the Districts District to ensure that such costs are not the responsibility of District residents. All such Fees shall be based upon the Districts District’s determination that such Fees do not exceed a reasonable annual market fee for users of such facilities. All operations and maintenance Fees and Fee increases shall be subject to review and approval by the Town.
2. **Fire Protection Limitation.** The District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain fire protection facilities or services, unless such facilities and services are provided pursuant to an intergovernmental agreement with the Town. The authority to plan for, design, acquire, construct, install, relocate, redevelop or finance fire hydrants and related improvements installed as part of the water system shall not be limited by this provision.

3. **Television Relay and Translation Limitation.** The District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain television relay and translation facilities and services, other than for the installation of conduit as a part of a street construction project, unless such facilities and services are provided pursuant to an intergovernmental agreement with the Town.

4. **Construction Standards Limitation.** The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the Town and of other governmental entities having proper jurisdiction. The District will obtain the Town’s approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

5. **Financial Advisor Certification.** Prior to the issuance of any privately placed Debt, other than the District’s new obligation to be issued to NBH Bank as described in Section VI.A., the District shall obtain the certification of an External Financial Advisor approved by the Town, in form substantially as follows:

   We are [I am] an External Financial Advisor within the meaning of the District’s Service Plan.

   We [I] certify that (1) the net effective interest rate (calculated as defined in Section 32-1-103(12), C.R.S.) to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

   The District shall submit notice to the Town Manager of the proposed External Financial Advisor which shall either be approved or objected to within ten (10) days of the selection of an External Financial Advisor. If the Town Manager does not object to such selection within the ten (10) day period, the Town Manager’s approval shall be deemed to have been given.

6. **Inclusion Limitation.** The District shall not include within their boundaries any property outside the Inclusion Area Boundaries. The District shall not include within any of their boundaries any property inside the Inclusion Area Boundaries without...
advance notice to the Town. No property will be included within any district the District at any time unless such property has been annexed into the Town’s corporate limits.

7. **Exclusion Limitation.** The Districts shall include all property with Other than the Exclusion Area Boundaries, the Inclusion Area by (Date) and District shall not exclude from the Districts’ boundaries thereafter any property within the Inclusion Area Boundaries which would result in the property not being within the boundaries of one of the Districts’ Service Area without the prior written consent of the Town. The Districts shall follow the procedure for exclusion of property as provided in Section 32-1-502, C.R.S.

8. **Overlap Limitation.** The boundaries of the Districts will not overlap unless the aggregate mill levies within the overlapping Districts will not at any time exceed the Maximum Debt Mill Levy, the Maximum Operations and Maintenance Mill Levy, and the Maximum Aggregate Mill Levy, respectively. Additionally, the Districts shall not consent to the organization of any other district organized under the Special District Act within the Service Area which will overlap the boundaries of the Districts unless the aggregate mill levy for the Districts will not at any time exceed the Maximum Debt Mill Levy, Maximum Operations and Maintenance Mill Levy, and the Maximum Aggregate Mill Levy, respectively.

9. **Initial Debt Limitation.** On or before the effective date of approval by the Town of an Approved Development Plan, the Districts shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any Fees used for the purpose of repayment of Debt. This requirement may be waived by administrative action of the Town.

9. **Total Debt Issuance Limitation.** The Districts shall not issue Debt in excess of ($____________), Twenty Million Dollars ($20,000,000).

10. **Fee Limitation.** The Districts may impose and collect Fees as a source of revenue for repayment of debt, capital costs, and/or for operations and maintenance. Any operations and maintenance Fees and Fee Increases not specifically listed herein shall be subject to review and written approval by the Town, either administratively or by formal action of Town Council, at the discretion of the Town Manager. If the Town does not respond to a request for the imposition of an operations and maintenance Fee or Fee Increase within thirty (30) days of receipt of a written request, the Town shall be deemed to have waived its approval authority with respect to the requested operations and maintenance Fee or Fee Increase. Any operation and maintenance Fee imposed without approval as set forth herein shall constitute a material departure from the Service Plan. No Fee related to the funding of costs of a capital nature shall be authorized to be imposed upon or collected from owners of Taxable Property owned or occupied by an End User which has the effect, intentional or otherwise, of creating a direct capital cost payment obligation in any year on any Taxable Property owned or occupied by an End User. Notwithstanding any of the foregoing, the restrictions in this section related to capital fees charged to End Users shall not apply to any Fee imposed upon or collected from Taxable Property for the purpose of funding operation and maintenance costs of the Districts.
It is anticipated that the District will impose and collect a Development Fee at the time of closing on the remaining unsold lots in the Service Area to assist in the funding of operation and maintenance of the Public Improvements. In addition, until such time that the assessed valuation increases as the Project builds-out to generate sufficient property tax revenues, the District anticipates imposing an operational and maintenance fee to assist in the funding of landscaping, irrigation, and other operational and maintenance costs of the District.

11. Monies from Other Governmental Sources. The District shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds, or other funds available from or through governmental or non-profit entities that the Town is eligible to apply for, except pursuant to an intergovernmental agreement with the Town. This Section shall not apply to specific ownership taxes which shall be distributed to and a revenue source for the District without any limitation.

12. Consolidation Limitation. The District shall not file a request with any Court to consolidate with another Title 32 district without the prior written consent of the Town, unless such consolidation is with District No. _____.

13. Bankruptcy Limitation. All of the limitations contained in this Service Plan, including, but not limited to, those pertaining to the Maximum Operations Mill Levy, Maximum Aggregate Mill Levy, Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term, and the Fees have been established under the authority of the Town to approve a Service Plan with conditions pursuant to Section 32-1-204.5, C.R.S. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Service Plan Amendment; and

(b) Are, together with all other requirements of Colorado law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable nonbankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

The filing of any bankruptcy petition by the District shall constitute, simultaneously with such filing, a material departure of the express terms of this Service Plan, and thus an express violation of the conditional approval of this Service Plan.

14. Water Rights/Resources Limitation. The District shall not acquire, own, manage, adjudicate or develop water rights or resources except as otherwise provided pursuant to an intergovernmental agreement with the Town. [add to IGA if applicable]

4.15. Extraterritorial Service/Improvements Limitation. Except for the limited operations and maintenance of certain Public Improvements benefiting the District and Serratoga Falls Metropolitan District No. 3 as described in that certain intergovernmental agreement attached hereto as EXHIBIT G, the District...
shall not acquire, own, manage, adjudicate or develop water rights or resources except as otherwise provided pursuant to an intergovernmental agreement with the Town. [add to IGA if applicable]

5.16. **Extraterritorial Service/Improvements Limitation.** The Districts shall not provide any extraterritorial service or public improvements without Town consent, which may be obtained administratively, in writing, from the Town Manager. [add to IGA if applicable]

6.17. **Eminent Domain Limitation.** The Districts shall be authorized to utilize the power of eminent domain after entering into a written agreement with the Town.

7.18. **Covenant Enforcement/Design Review.** The Districts shall provide all community functions authorized by covenants, conditions and restrictions including the Covenant Enforcement and Design Review Services for the Project, unless otherwise provided pursuant to an intergovernmental agreement with the Town. [add to IGA if applicable]

The Districts shall not impose assessments to fund Covenant Enforcement and Design Review Services, but the Districts shall be authorized to impose Fees to defray the costs of such Services. The Districts shall be authorized to contract among themselves to assign responsibility for Covenant Enforcement and Design Review Services.

8.19. **Financial Review.** The Town shall be permitted to conduct periodic reviews of the financial powers of the Districts in the service plan at its discretion, including more frequently than the so-called “quinquennial” review contemplated by CRS Section 32-1-1101.5. Within sixty days of receipt of notice of the Town’s intent to conduct such a financial review, the Districts shall submit to the Town an application for a finding of reasonable due diligence setting forth the amount of the District’s authorized but unissued general obligation debt, any current or anticipated plan to issue such debt, a copy of the District’s last audit or audit exemption, and any other information required by the Town relevant to making its determination of due diligence as provided below.

The Town’s procedures for conducting a financial review under this Paragraph 19, and the remedies available to the Town as a result of such financial review shall be identical to those provided for in CRS Section 32-1-1101.5(2).

C-B. **Service Plan Amendment Requirement.**

This Service Plan has been designed with sufficient flexibility to enable the Districts to provide required services and facilities under evolving circumstances without the need for numerous amendments. Actions of the Districts which violate the limitations set forth in V.A above or in VI.A-I. shall be deemed to be material modifications to this Service Plan and the Town shall be entitled to all remedies available under State and local law to enjoin such actions of the Districts, including the remedy of enjoining the issuance of additional authorized but unissued debt, until such material modification is remedied.

D. **Preliminary Engineering Survey.**

The Districts shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, and financing of the Public Improvements within and without the boundaries of the Districts as set forth on Exhibit F, to be more
specifically defined in an Approved Development Plan. An estimate of the costs of the Public Improvements which may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, or financed was prepared based upon a preliminary engineering survey and estimates derived from the zoning on the property in the Service Area and is approximately ____________________ Dollars ($__________).

All of the Public Improvements will be designed in such a way as to assure that the Public Improvements standards will be compatible with those of the Town, or any other appropriate entity providing a service the Town does not provide, and shall be in accordance with the requirements of the Approved Development Plan. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

**Multiple District Structure.**

It is anticipated that the Districts, collectively, will undertake the financing and construction of the improvements contemplated herein. Specifically, the Districts shall enter into an intergovernmental agreement which shall govern the relationships between and among the Districts with respect to the financing, construction and operation of the improvements contemplated herein. The Districts will establish a mechanism whereby any one or more of the Districts may separately or cooperatively fund, construct, install and operate the improvements.

VI. **FINANCIAL PLAN**

A. **General.**

Public Improvements to benefit the inhabitants and taxpayers of the Service Area have been constructed. The Districts shall have issued certain notes to the original developer of the property within the Districts to evidence the Districts’ reimbursement obligation for approximately $8 million in public improvements constructed. Upon foreclosure of the developer’s property, NBH Bank became the holder of the notes. The Districts entered into negotiations with NBH Bank, and as a result, the District will issue a new obligation to NBH Bank for approximately $800,000, subject to the repayment terms set forth in **EXHIBIT F** upon Town approval of this Service Plan and the exclusion of the Exclusion Area Boundaries by the District.

The District is authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Public Improvements, as may be needed in the future to serve the Service Area, from its revenues and by and through the proceeds of Debt to be issued by the Districts. The Financial Plan for the Districts shall be to issue such Debt as the Districts can reasonably pay within the Maximum Debt Mill Levy Imposition Term from revenues derived from the Maximum Debt Mill Levy and other legally available revenues. The total Debt that the Districts shall be permitted to issue shall not exceed ____________________ Twenty Million Dollars ($20,000,000) and shall be permitted to be issued on a schedule and in such year or years as the District determines shall meet the needs of the Financial Plan referenced above and phased to serve development as it occurs. All Bonds and other Debt issued by the District may
be payable from any and all legally available revenues of the District, including general ad valorem taxes and Fees to be imposed upon all Taxable Property within the District. The District will also rely upon various other revenue sources authorized by law. These will include the power to assess Fees, rates, tolls, penalties, or charges as provided in Section 32-1-1001(1), C.R.S., as amended from time to time, subject to the limits in this Service Plan. In addition to the information in this Section VI, the Town may require additional financial forecasts and feasibility reports.

**B. Maximum Voted Interest Rate and Maximum Underwriting Discount.**

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. All debt-related election ballot questions shall provide that in the event of a default, the proposed maximum interest rate on any Debt shall not exceed eighteen percent (18%). All debt-related election ballot questions shall provide that the proposed maximum underwriting discount for Debt will be five percent (5%). Debt, when issued, will comply with all relevant requirements of this Service Plan, State law and Federal law as then applicable to the issuance of public securities. All debt-related election ballot questions shall be drafted so as to limit the District’s debt service mill levy to the Maximum Debt Mill Levy. Prior to any election to authorize the issuance of Debt, the District shall cause a letter prepared by an attorney licensed in the State of Colorado to be provided to the Town opining that the requirements of this paragraph have been satisfied. Failure to observe the requirements established in this paragraph shall constitute a material modification under the Service Plan and shall entitle the Town to all remedies available at law and in equity, including the remedies provided for in Section V(19), herein.

**C. Maximum Mill Levies.**

1. The Maximum Debt Mill Levy shall be the maximum mill levy at the District is permitted to impose upon the taxable property within such District for payment of Debt, and shall be fifty (50) mills. If there are changes in the method of calculating assessed valuation or any constitutionally mandated or statutorily authorized tax credit, cut or abatement, the mill levy limitation applicable to such Debt may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2014, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation to assessed valuation shall be deemed to be a change in the method of calculating assessed valuation.

2. The Maximum Operations and Maintenance Mill Levy shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of administration, operations, maintenance, and capital costs, and shall be fifty (50) mills. If there are changes in the method of calculating assessed valuation or any constitutionally mandated or statutorily authorized tax credit, cut or abatement; the mill levy limitation applicable to such Debt may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (such
3. The Maximum Aggregate Mill Levy shall be the maximum combined mill levy a District is permitted to impose upon the taxable property within the District for payment of all expense categories, including but not limited to: Debt, capital costs, and administration, operations, and maintenance costs, and shall be fifty (50) mills. However, if, on or after January 1, 2014, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement, the preceding mill levy limitations may be increased or decreased to reflect such changes, with such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2014, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation to assessed valuation shall be deemed to be a change in the method of calculating assessed valuation. Except as provided in this paragraph, the provisions below, or pursuant to separate intergovernmental agreement entered into with the Town under extraordinary circumstances, the Maximum Aggregate Mill Levy shall not be exceeded under any circumstances. Imposition by a District of a mill levy in excess of this limitation shall constitute a material departure from this Service Plan.

4. If the total amount of aggregate Debt of a District exceeds fifty percent (50%) of that District’s assessed valuation, the Maximum Debt Mill Levy shall be fifty (50) mills; provided that if the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement is changed by law; the mill levy limitation applicable to such Debt may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2014, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation. If the total amount of aggregate Debt of a District is equal to or less than fifty percent (50%) of that District’s assessed valuation, either on the date of issuance or at any time thereafter, the Maximum Debt Mill Levy, the Maximum Operations and Maintenance Mill Levy, and the Maximum Aggregate Mill Levy will each be increased to sixty (60) mills.

5. For purposes of the foregoing, once Debt has been determined to be within Section VI.C.4. above, so that the District is entitled to pledge to their debt service payments the increased Maximum Debt Mill Levy as described above, the District may provide that such Debt shall remain secured by the increased Maximum Debt Mill Levy as described above, notwithstanding any subsequent change in the District’s Debt to assessed ratio. All Debt issued by the District must be issued in compliance with the requirements of Section 32-1-1101, C.R.S. and all other requirements of State law.
6. To the extent that the District is composed of or subsequently organized into one or more subdistricts as permitted under Section 32-1-1101, C.R.S., the term “District” as used herein shall be deemed to refer to the District and to each such subdistrict separately, so that each of the subdistricts shall be treated as a separate, independent district for purposes of the application of this definition.

7. Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Service Plan pursuant to Section 32-1-207, C.R.S. and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the Town as part of a Service Plan Amendment.

D. Maximum Debt Mill Levy Imposition Term.

No The District shall have any authority to impose or collect any mill levy, fee, charge, rate, toll or any other financial burden on property or persons for repayment of any and all Debt (or use the proceeds hereof for repayment of Debt) on any single property developed for residential uses which exceeds forty (40) years after the year of the initial imposition of a debt service mill levy by the District in which such property is located, unless a majority of the Board are residents of the District and the Board shall have voted in favor of a refunding of a part or all of the Debt. At the end of the forty (40) year term any and all Debt that has not been paid shall be forgiven. [may form multiple financing districts to address phasing issues].

E. Debt Repayment Sources.

The District may impose a mill levy on taxable property within its boundaries as a primary source of revenue for repayment of debt service and for operations and maintenance. The District may also rely upon various other revenue sources authorized by law. At the District’s discretion, these may include the power to assess fees, rates, tolls, penalties, or charges as provided in Section 32-1-1001(1), C.R.S., as amended from time to time. In no event shall the debt service mill levy in the District exceed the Maximum Debt Mill Levy or, the Maximum Debt Mill Levy Imposition Term.

F. Debt Instrument Disclosure Requirement.

In the text of each Bond and any other instrument representing and constituting Debt, the District shall set forth a statement in substantially the following form:

By acceptance of this instrument, the owner of this Bond agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Bond contained herein, in the resolution of the District authorizing the issuance of this Bond and in the Service Plan for creation of the District.

Similar language describing the limitations in respect of the payment of the principal of and interest on Debt set forth in this Service Plan shall be included in any document.
used for the offering of the Debt for sale to persons, including, but not limited to, a developer of property within the boundaries of the District.

G. Security for Debt

The District shall not pledge any revenue or property of the Town as security for the indebtedness set forth in this Service Plan. Approval of this Service Plan shall not be construed as a guarantee by the Town of payment of any of the District’s obligations; nor shall anything in the Service Plan be construed so as to create any responsibility or liability on the part of the Town in the event of default by the District in the payment of any such obligation.

H. TABOR Compliance

The District will comply with the provisions of TABOR. In the discretion of the Board, of any one or all of the Districts may set up other qualifying entities to manage, fund, construct and operate facilities, services, and programs. To the extent allowed by law, any entity created by the District will remain under the control of the District’s Board.

I. District Operating Costs

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the District’s organization and initial operations, are anticipated to be ____________________ Dollars ($__________________), which will be eligible for reimbursement from Debt proceeds.

In addition to financing the capital costs of the Public Improvements, the District will require operating funds for administration and to plan and cause the Public Improvements to be constructed and maintained. The first year’s District’s operating budget for 2015 is estimated to be ____________ Dollars ($__________), which is anticipated to be derived from property taxes and other revenues.

VII. ANNUAL REPORT

A. General

The District shall be responsible for submitting an annual report to the Town Manager’s Office no later than August 1st of each year following the year in which the Order and Decree creating the District has been issued-approved by the Town.

B. Reporting of Significant Events

The annual report shall include information as to any of the following:

1. Boundary changes made or proposed to the District’s boundary as of December 31 of the prior year.
2. Intergovernmental Agreements with other governmental entities, either entered into or proposed as of December 31 of the prior year.

3. Copies of the District's rules and regulations, if any as of December 31 of the prior year.

4. A summary of any litigation which involves the Public Improvements as of December 31 of the prior year.

5. Status of the District's construction of the Public Improvements as of December 31 of the prior year.

6. A list of all facilities and improvements constructed by the District that have been dedicated to and accepted by the Town as of December 31 of the prior year.

7. The assessed valuation of the District for the current year.

8. Current year budget including a description of the Public Improvements to be constructed in such year.

9. Audit of the District's financial statements, for the year ending December 31 of the previous year, prepared in accordance with generally accepted accounting principles or audit exemption, if applicable.

10. Notice of any uncured events of default by any of the District's, which continue beyond a ninety (90) day period, under any Debt instrument.

11. Any inability of a District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a ninety (90) day period.

In addition to the annual report, the District will be required to submit to a periodic review, unlimited in scope, as provided for in Section V(19) herein.

VIII. DISSOLUTION

Upon an independent determination by the Town Council that the purposes for which a District was created have been accomplished, all powers contained in the service plan will be suspended except as necessary to develop and propose a plan for dissolution and to conduct all proceedings required for the dissolution, including an election, if necessary. The District agrees to file a petition and a plan for dissolution with the Town for review and approval before filing said documents in the appropriate district court in accordance with §32-1-701 et seq. C.R.S.
IX. DISCLOSURE TO PURCHASERS

The Districts will use reasonable efforts to assure that all developers of the property located within the Districts provide written notice to all purchasers of property in the Districts regarding the Maximum Aggregate Mill Levy, as well as a general description of the District's authority to impose and collect rates, Fees, tolls and charges. The form of notice shall be filed with the Town prior to the initial issuance of the Debt of the District imposing the mill levy which is the subject of the Maximum Aggregate Mill Levy.

X. INTERGOVERNMENTAL AGREEMENTS

The form of the intergovernmental agreement, relating to the limitations imposed on the District's activities, is attached hereto as Exhibit D-E. The Districts shall approve the intergovernmental agreement in the attached form at its first Board meeting after its organizational election. Failure of the District to execute the intergovernmental agreement as required herein shall constitute a material modification and shall require a Service Plan Amendment. The Town Council shall approve the intergovernmental agreement in the attached form at the public hearing approving the Service Plan. Any determination by a court of competent jurisdiction that such intergovernmental agreement is invalid, nonbinding, or unenforceable in any material degree shall be deemed a material departure from the express terms of this Service Plan.

The form of the TDA Intergovernmental Agreement is attached hereto as Exhibit E. The Districts shall approve the TDA Intergovernmental Agreement in the attached form at its first Board meeting after its organizational election. Failure of the Districts to execute the TDA Intergovernmental Agreement as required herein shall constitute a material modification and shall require a Service Plan Amendment. The Town Council shall approve the TDA Intergovernmental Agreement in the attached form at the public hearing approving the Service Plan.

All

On July 31, 2006, the Districts entered into an Inter-District Intergovernmental Agreement pursuant to which Serratoga Falls Metropolitan District No. 1 agreed to provide public improvements and operations and maintenance services for the Districts and the Districts agreed to pay District No. 1 all revenue raised from mill levies and other fees assessed by the District and District No. 3 for the public improvements and operation and maintenance services provided. Such Agreement shall continue into effect until December 31, 2015, at which time the Districts shall terminate the Agreement.

The District and Serratoga Falls Metropolitan Districts No. 1 and/or No. 3 anticipate entering into a cost sharing intergovernmental agreement, as attached hereto as EXHIBIT G, pursuant to which the Districts will set forth the terms and conditions for funding, operating, and maintaining certain Public Improvements benefiting inhabitants and taxpayers in the Districts.

Except as otherwise described in this Section VIII, any other intergovernmental agreements must be submitted to the Town for review and approval by the Town before execution by the Districts.
XI. CONCLUSION

It is submitted that this Service Plan for the DistrictsDistrict, as required by Section 32-1-203(2), C.R.S., establishes that:

1. There is sufficient existing and projected need for organized service in the area to be serviced by the DistrictsDistrict.

2. The existing service in the area to be served by the DistrictsDistrict is inadequate for present and projected needs.

3. The DistrictsDistrict is capable of providing economical and sufficient service to the area within its proposed boundaries; and

4. The area to be included in the DistrictsDistrict does have, and will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

5. Adequate service is not, and will not be, available to the area through the Town or county or other existing municipal or quasi-municipal corporations, including existing special districts, within a reasonable time and on a comparable basis.

6. The facility and service standards of the DistrictsDistrict are compatible with the facility and service standards of the Town within which the special district is to be located and each municipality which is an interested party under Section 32-1-204(1), C.R.S.

7. The proposalService Plan is in substantial compliance with a comprehensive plan adopted pursuant to the Town Code.

8. The proposalService Plan is in compliance with any duly adopted Town, regional or state long-range water quality management plan for the area.

9. The creation of the DistrictsDistrict is in the best interests of the area proposed to be served.
EXHIBIT A

Legal Descriptions

Legal Description of Initial District Boundaries
EXHIBIT B
Timnath Vicinity Map
EXHIBIT C-4
Initial District Boundary Map
EXHIBIT C-2D-1
Inclusion Exclusion Area Boundary Map
EXHIBIT D-2
Legal Description of Exclusion Area Boundaries
EXHIBIT E
Intergovernmental Agreement between the District and Timnath
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE TOWN OF TIMNATH, COLORADO
AND
SERRATOGA FALLS METROPOLITAN DISTRICT NOS.
NO. 2

THIS AGREEMENT is made and entered into as of this ________ day of
______, 2015, by and between the TOWN OF TIMNATH, a home-rule
municipal corporation of the State of Colorado (“Town”), and SERRATOGA
FALLS METROPOLITAN DISTRICT NOS. ____, NO. 2, a quasi-municipal
corporation and political subdivision of the State of Colorado (the
“Districts”). The Town and the Districts are collectively referred to as the
Parties.

RECITALS

WHEREAS, the Districts were organized to provide those services and to
exercise powers as are more specifically set forth in the District’s Service Plan
approved by the Town on ____________________ (“Service Plan”); and

WHEREAS, the Service Plan makes reference to the execution of an intergovernmental
agreement between the Town and the Districts, as required by the Timnath Town Code; and

WHEREAS, the Town and the Districts have determined it to be in the best
interests of their respective taxpayers, residents and property owners to enter into this
Intergovernmental Agreement (“Agreement”).

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein
contained, and for other good and valuable consideration, the receipt and sufficiency of which
are hereby acknowledged, the Parties hereto agree as follows:

COVENANTS AND AGREEMENTS

1. Operations and Maintenance. The purpose of the Districts is to plan for,
design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The
Districts shall dedicate the Public Improvements for use by the inhabitants and taxpayers of the
Service Area have been completed. Streets and related traffic and safety protection
improvements have been dedicated to the Town or other appropriate jurisdiction in a manner
consistent with the Approved Development Plan and other rules and regulations of the Town and
applicable provisions of the Town Code. The Districts. The District shall operate and maintain
all trails and related amenities within the District pursuant to an intergovernmental agreement.
with the Town, which shall be executed at the first meeting of the District after approval of this Service Plan. Operational activities for other Public Improvements not dedicated to another entity are allowed subject to entering into an intergovernmental agreement with the Town allowing the Town to set minimum standards for maintenance. All parks and trails shall be open to the general public, including Town residents who do not reside in the District, free of charge. Any Fee imposed by the District for access to recreation improvements owned by the District, other than parks and trails, shall not result in Town residents who reside outside the District paying a user fee that is greater than, or otherwise disproportionate to, similar fees and taxes paid by residents of the District. However, the District shall be entitled to impose an administrative Fee as necessary to cover additional expenses associated with use of District park and recreational improvements by Town residents who do not reside in the District to ensure that such costs are not the responsibility of a District’s residents. All such Fees shall be based upon the District’s determination that such Fees do not exceed a reasonable annual market fee for users of such facilities. All operations and maintenance Fees and Fee increases shall be subject to review and approval by the Town. Notwithstanding the foregoing, all parks and trails shall be open to the general public, including Town residents who do not reside in the District, free of charge.

It is anticipated that the District will impose and collect a Development Fee at the time of closing on the remaining unsold lots in the Service Area to assist in the funding of operation and maintenance of the Public Improvements. In addition, until such time that the assessed valuation increases as the Project builds-out to generate sufficient property tax revenues, the District anticipates imposing an operational and maintenance fee to assist in the funding of landscaping, irrigation, and other operational and maintenance costs of the District.

2. **Water Rights/Resources Limitation.** The Districts shall not acquire, own, manage, adjudicate or develop water rights or resources except as otherwise provided pursuant to an intergovernmental agreement with the Town. [Add to IGA if applicable]

3. **Extraterritorial Service/Improvements Limitation.** The District shall be permitted to provide operational and maintenance services of certain Public Improvements benefiting the District and Serratoga Falls Metropolitan Districts Nos. 1 and/or 3 pursuant to an intergovernmental agreement approved by the Town. Except as otherwise provided herein, the District shall not provide any extraterritorial service or public improvements without Town consent, which may be obtained administratively, in writing, from the Town Manager.

3.4 **Service Plan.** The District shall not take any action, including without limitation the issuance of any obligations or the imposition of any tax or fee, which would constitute material modification of the Service Plan as set forth in Section 32-1-207(2), C.R.S. Actions of the District which violate any restriction set forth in the Service Plan constitute a material modification of the Service Plan that shall be a default under this Section 32-1-207(2).
Agreement, and shall entitle the Town to protect and enforce its rights under this Agreement by
such suit, action, or special proceedings as the Town deems appropriate. It is intended that the
contractual remedies herein shall be in addition to any remedies the Town may have or actions
the Town may bring under Section 32-1-207, C.R.S., or any other applicable statute. The Town
may impose any sanctions allowed by the Timnath Municipal Code or statute. Nothing herein is
intended to modify or prevent the use of the provisions of Section 32-1-207(3)(b), C.R.S,
however, the time limits of Section 32-1-207(3)(b), C.R.S., are expressly waived by the Districts.

The Service Plan grants authority to the Districts to construct some or all of the
Public Improvements identified herein. If the Districts elect not to provide certain of the Public
Improvements that are part of an Approved Development Plan, the Districts shall notify the
Town in writing of such election whereupon the Town shall have 30 days to provide a letter to
the Districts that such election does not constitute a material modification hereof or to otherwise
advise the Districts of the obligation to seek a formal amendment to this Service Plan. If the
Town determines that such election does not constitute a material modification hereof, the
Districts shall submit a written modification of this Service Plan to the Town for administrative
approval as a non—material modification whereupon the authority of the Districts to provide
such Public Improvements shall be deemed stricken from the Service Plan.

4.5 Notices. All notices, demands, requests or other communications to be
sent by one party to the other hereunder or required by law shall be in writing and shall be
deemed to have been validly given or served by delivery of same in person to the address or by
courier delivery, via United Parcel Service or other nationally recognized overnight air courier
service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the
Districts:
Serratoga Falls Metropolitan
District No. 2
c/o Icenogle Seaver Pogue, P.C.
Attn: Deborah A. Early
4725 S. Monaco St., Suite 225
Denver, Colorado 80237
Phone: (303) 292-9100
Fax: (303) 292-9101

To the Town:
Attn: Town Manager
Town of Timnath
4800 Goodman Street
Timnath, CO 80547
Phone: (970) 224-3211

All notices, demands, requests or other communications shall be effective upon
such personal delivery or one (1) business day after being deposited with United Parcel Service
or other nationally recognized overnight air courier service or three (3) business days after
deposit in the United States mail. By giving the other party hereto at least ten (10) days written
notice thereof in accordance with the provisions hereof, each of the Parties shall have the right
from time to time to change its address.

5.6. Amendment. This Agreement may be amended, modified, changed, or
terminated in whole or in part only by a written agreement duly authorized and executed by the
Parties hereto and without amendment to the Service Plan.

6.7. Assignment. Neither Party hereto shall assign any of its rights nor
delegate any of its duties hereunder to any person or entity without having first obtained the prior
written consent of the other Party, which consent will not be unreasonably withheld. Any
purported assignment or delegation in violation of the provisions hereof shall be void and
ineffectual.

7.8. Default/Remedies. In the event of a breach or default of this Agreement
by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law
or in equity, specifically including suits for specific performance and/or monetary damages. In
the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing
Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable
attorneys' fees.

8.9. Governing Law and Venue. This Agreement shall be governed and
construed under the laws of the State of Colorado.

9.10. Inurement. Each of the terms, covenants and conditions hereof shall be
binding upon and inure to the benefit of the Parties hereto and their respective successors and
assigns.

10.11. Integration. This Agreement constitutes the entire agreement between the
Parties with respect to the matters addressed herein. All prior discussions and negotiations
regarding the subject matter hereof are merged herein.

12. Parties Interested Herein. Nothing expressed or implied in this Agreement
is intended or shall be construed to confer upon, or to give to, any person other than the
DistrictsDistrict and the Town any right, remedy, or claim under or by reason of this Agreement
or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms,
conditions, and provisions in this Agreement by and on behalf of the DistrictsDistrict and the
Town shall be for the sole and exclusive benefit of the DistrictsDistrict and the Town.

13. Severability. If any covenant, term, condition, or provision under this
Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or
unenforceability of such covenant, term, condition, or provision shall not affect any other
provision contained herein, the intention being that such provisions are severable.
13.14. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

14.15. **Paragraph Headings.** Paragraph headings are inserted for convenience of reference only.

15.16. **Defined Terms.** Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Service Plan.

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**SERRATOGA FALLS METROPOLITAN DISTRICT NO. 2**

By: __________________________
President

Attest:

____________________________________
Secretary

**TOWN OF TIMNATH, COLORADO**

By: __________________________
Mayor

Attest:

By: __________________________
Its: __________________________

APPROVED AS TO FORM: __________________________
EXHIBIT F
Term Sheet with NBH Bank
EXHIBIT G

Intergovernmental Agreement [if applicable] between the District and Serratoga Falls Metropolitan Districts Nos. 1 and/or 3
TOWN COUNCIL COMMUNICATION

| Meeting Date: | Item: 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: | Town Attorney |

| | Ordinance □ Resolution □ Discussion X |

| KEY POINTS/SUPPORTING INFORMATION: |

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.”

| ADVANTAGES: |
| N/A |

| DISADVANTAGES: |
| N/A |

| FINANCIAL IMPACT: |
| N/A |

| RECOMMENDATIONS: |
| I move to enter into Executive Session “For ______________________________________________.” |

| ATTACHMENTS: |
| N/A |