TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 27, SERIES 2016

A RESOLUTION RATIFYING A REQUEST FOR MEDIATION WITH THE TOWN OF SEVERANCE, COLORADO

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, the Town of Severance, Colorado has expanded its growth management area into the Town of Timnath’s growth management area (GMA); and

WHEREAS, the area in question has been in the Town of Timnath’s GMA since 2007; and

WHEREAS, the Town of Severance is considering an annexation commonly referred to as Buffalo Creek in the overlapping GMA even though the property is immediately adjacent to the Town of Timnath town limits; and

WHEREAS, the Town of Timnath Mayor has repeatedly requested a meeting with the Town of Severance to discuss reaching a mutually acceptable solution with no response from the Town of Severance; and

WHEREAS, as a result the Timnath Mayor has submitted the attached letter requesting mediation per the provisions of the Colorado State Statutes; and

WHEREAS, the Town Council finds it to be in the best interest of the Town, its residents, and the general public to ratify said letter and support the request for mediation.

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

Section 1. Approval
The attached letter to the Town of Severance requesting mediation is hereby approved and ratified in support of the Town of Timnath’s efforts to mediate differences with the Town of Severance as outlined in the attached.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON APRIL 12, 2016.
TOWN OF TIMNATH, COLORADO

Jill Grossman-Belisle, Mayor

ATTEST:

Milissa Peters, CMC
Town Clerk
March 23, 2016

VIA FEDEX AND
E-MAIL DON.BROOKSHIRE@TOWNOFSEVERANCE.ORG

Town of Severance
Attention: Don Brookshire, Mayor
3 S. Timber Ridge Parkway
Severance, CO 80550

RE: Town of Timnath ("Timnath") objection and request for mediation regarding the Town of Severance (the "Severance") Comprehensive Plan Amendment expanding the Town’s Growth Management Area, which was approved by the Town Board on February 22, 2016 (the “Plan Amendment”), and the proposed annexation of the real property located in unincorporated Weld County known as Buffalo Creek, for which a request for referral comments was sent to Timnath on March 9, 2016 (the “Proposed Annexation”) pursuant to C.R.S. § 24-32-3209.

Dear Mayor Brookshire:

I am writing on behalf of the Timnath Town Council to object once again to Severance’s recent adoption of the Plan Amendment and ongoing consideration of the Proposed Annexation.

As you know, the Plan Amendment expanded Severance’s growth management area (GMA) westward to Larimer County Road 1 (Weld County Road 13). Timnath has shown this area on our GMA since June of 2007, and this boundary is part of an intergovernmental agreement with the City of Fort Collins ("Fort Collins"); its location has numerous implications for several Northern Colorado communities.

Severance’s subsequent passage of a resolution supporting the Proposed Annexation has additional widespread impacts. The Buffalo Creek property is within Timnath’s GMA and is located immediately adjacent to Timnath. Its annexation into Severance could result in development at Timnath’s doorstep without our consent or input and could erase important boundaries between Timnath, Severance and the Town of Windsor ("Windsor").

Timnath requests that Severance participate in mandatory mediation pursuant to C.R.S. § 24-32-3209(2) and (2.3) to resolve these issues. We regret that a solution to these issues could not be arrived at in a different manner, but Severance’s lack of response to Timnath’s numerous efforts to begin talks has left us no choice. These requests were made in our letter dated January 15, 2016 and during my own statement on behalf of Timnath at the March 21, 2016 Severance Town Board meeting.

Our objection and request for mediation are on the basis that: 1) Timnath is a “neighboring jurisdiction” as defined in C.R.S. § 24-32-3209(1)(h), and 2) that we are a party to cooperative planning intergovernmental agreements ("IGAs") with Windsor, dated as of September 23, 2002 and October 13, 2014, respectively, and Fort Collins, the most recent update being dated October 28, 2014. All of these IGAs cover portions of property included in the Proposed Annexation. These agreements constitute "development plans" under C.R.S. § 24-32-3209(1)(c.5) and are enclosed here for your reference.
The purpose of the requested mediation is to resolve our differences on the Plan Amendment and Proposed Annexation and to arrive at a mutually beneficial agreement focused on development at the boundaries of the two communities.

I have attached to this letter a list of qualified alternative dispute resolution professionals, which is maintained by the Colorado Department of Local Affairs – Department of Local Government to help in circumstances like the one at hand. Please review this list and let us know your top three candidates, and we will reach out to confirm their availability. Timnath understands that it is required under statute to pay for the costs of the mediator’s services.

Please also advise as to times when representatives from Severance will be available to meet for the mediation.

We respectfully request that Severance reply to this letter as soon as possible. Please note that petition for the Proposed Annexation may not be referred to the Town Board for consideration of the petition’s substantial compliance with the requirements of the Municipal Annexation Act of 1965 until either the mediation has been completed, or until at least 90 days have passed from your receipt of this request pursuant to C.R.S. § 24-32-3209(2.3)(c).

Due to today’s inclement weather, we will deliver a hard copy of our written objection tomorrow.

We look forward to working with you to resolve these issues.

Sincerely,

Jill Grossman-Belisle
Mayor of Timnath
On behalf of Town Council

cc: Town Board, Town of Severance (dennis.kane@townofseverance.org,
Robert.brown@townofseverance.org, bruce.florquist@townofseverance.org,
mike.kinney@townofseverance.org, tim.reichel@townofseverance.org,
Michael.young@townofseverance.org)
Board of County Commissioners of Weld County (mfreeman@weldgov.com,
jcozad@weldgov.com, bkirkmeyer@weldgov.com, seconway@weldgov.com,
smoreno@weldgov.com)
Board of County Commissioners of Larimer County (gaiter@co.larimer.co.us,
johnsonw@co.larimer.co.us, donnelly@co.larimer.co.us)
Anne Miller, AICP, DOLA (anne.miller@state.co.us)
Don Sandoval, DOLA (don.sandoval@state.co.us)
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<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Phone</th>
<th>Email</th>
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<tbody>
<tr>
<td>Mr. Steve Charbonneau</td>
<td>Community Mediation Concepts</td>
<td>839 Pendleton Ave</td>
<td>303-717-2167</td>
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<td></td>
<td>Longmont, CO 80501</td>
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<td><a href="mailto:steve@findsolutions.org">steve@findsolutions.org</a></td>
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<td>Ms. Barbara Green</td>
<td>Sullivan Green Seavy, LLC</td>
<td>3223 Arapahoe Ave</td>
<td>303-355-4405</td>
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<td></td>
<td>Boulder, CO 80303</td>
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<td><a href="mailto:lawgreen@earthlink.net">lawgreen@earthlink.net</a></td>
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<td>Mr. James Harrison</td>
<td>James L. Harrison, P.C.</td>
<td>772 Humboldt St.</td>
<td>303-321-8809</td>
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<td></td>
<td>Denver, CO 80218</td>
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<td><a href="mailto:jharrismed@aol.com">jharrismed@aol.com</a></td>
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<tr>
<td>Mr. Daniel Himelspach</td>
<td>Dispute Management, Inc.</td>
<td>1801 Williams St.</td>
<td>303-321-1115</td>
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<td></td>
<td>Suite 300</td>
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<td><a href="mailto:dch@disputemanagementinc.com">dch@disputemanagementinc.com</a></td>
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<tr>
<td>Mr. Jonathan Larson</td>
<td>Jonathan H. Larson, Attorney at</td>
<td>2925 S. Clayton St</td>
<td>720-934-0584</td>
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<td></td>
<td>Law</td>
<td>Denver, CO 80210</td>
<td><a href="mailto:jonathanlarson@msn.com">jonathanlarson@msn.com</a></td>
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<td>Ms. Sally Ortner</td>
<td>650 Grant Street</td>
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<td><a href="mailto:salortner@aol.com">salortner@aol.com</a></td>
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<tr>
<td>Mr. James W. &quot;Skip&quot;</td>
<td>Spensley</td>
<td>1635 Ivanhoe St.</td>
<td>303-888-1290</td>
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<td></td>
<td>Spensley &amp; Associates</td>
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<td><a href="mailto:jwspensley@gmail.com">jwspensley@gmail.com</a></td>
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<td>Ms. Angela Mackey</td>
<td>ASSC Services LLC</td>
<td>21675 Solar Ct. /PO Box 64</td>
<td>970-874-8755</td>
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<td></td>
<td>Mediation Services</td>
<td>Delta, CO 81416-0064</td>
<td><a href="mailto:amack1975@earthlink.net">amack1975@earthlink.net</a></td>
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<tr>
<td>Ms. Tricia Winslow</td>
<td>Mediation &amp; Facilitation</td>
<td>P.O. Box 461</td>
<td>970-249-6250</td>
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<td></td>
<td>Services</td>
<td>Olathe, CO 81425</td>
<td><a href="mailto:tricia@wwestlk.com">tricia@wwestlk.com</a></td>
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<td>Mr. Joseph McMahon,</td>
<td>Collaborative Processes</td>
<td>617 Steele St.</td>
<td>303-333-1960</td>
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<tr>
<td>Jr.</td>
<td></td>
<td>Denver, CO 80206-3941</td>
<td><a href="mailto:jpmcmahon@jpmcmahon.com">jpmcmahon@jpmcmahon.com</a></td>
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TOWN OF WINDSOR

RESOLUTION NO. 2008- 39

BEING A RESOLUTION REPEALING AND READOPTING EXHIBIT “A” OF THE INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE TOWN OF WINDSOR, COLORADO AND THE TOWN OF TIMNATH, COLORADO CONCERNING THE TIMNATH COOPERATIVE PLANNING AREA

WHEREAS, on September 23, 2002 the Town of Windsor and the Town of Timnath (the “parties”) entered into an Intergovernmental Agreement to participate in joint cooperation planning efforts in the vicinity of the growth management area boundary which is common to both municipalities; and

WHEREAS, the parties have each received a letter from a property owner whose property lies within each municipality’s growth management area and the parties agree that said property should be situated entirely within only one growth management area; and

WHEREAS, Exhibit “A” of said Intergovernmental Agreement depicts the joint cooperative planning area in which said property owner’s property is located and therefore should be adjusted to reflect the same;

IT IS HEREBY RESOLVED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

1. That the Town of Windsor hereby amends said Exhibit “A” of said Intergovernmental Agreement dated September 23, 2002 between the Town of Windsor and the Town of Timnath as shown on the enclosed Exhibit “A” attached hereto and incorporated herein by this reference.

2. That the Town of Windsor hereby authorizes the Mayor of the Town to execute this Resolution and the Town Clerk to attest thereto.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 24th day of March, 2008.

TOWN OF WINDSOR, COLORADO

By: ____________________________
   Mayor

ATTEST: ____________________________
   Town Clerk
EXHIBIT A
Planning Areas - Towns of Windsor and Timnath

Legend
- GMA Timnath
- GMA Windsor
- Timnath/Windsor
- Cooperative Planning Boundary

Legend:
- Timnath/Windsor
- Cooperative Planning Boundary

1" = 4,000"
INTERGOVERNMENTAL AGREEMENT

This Agreement is made and entered into to be effective the 23rd day of September, 2002, between the TOWN OF TIMNATH ("Timnath") and the TOWN OF WINDSOR ("Windsor") each a municipal corporation of the State of Colorado (collectively referred to as the "Parties").

Findings

Windsor and Timnath find and agree that:

WHEREAS, pursuant to Colorado Constitution Article XIV, Section 18(2)(a) and C.R.S. §29-1-201, et seq., the Parties may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each and pursuant to C.R.S. §29-20-101, et seq., the Parties are authorized and encouraged to cooperate or contract with each other for the purposes of planning or regulating the development of land, and may provide through intergovernmental agreement for enforceable comprehensive development plans within their jurisdictions; and

WHEREAS, both Parties are committed to planned and orderly growth; to regulating the location of activities and development which may result in increased demands for its services; to reducing and avoiding, where possible, friction between the two Parties; to promoting the economic viability of their respective communities; and

WHEREAS, The Parties desire to establish a boundary between the two municipalities over which neither Party shall annex to avoid conflicts in the future over orderly planning and development, provision of utilities and other municipal services, and to facilitate implementation of other land use planning agreements in the region, including intergovernmental agreements with Larimer County, for separators between Larimer County municipalities and coordination of development along the I-25 corridor; and

WHEREAS, this Intergovernmental Agreement ("Agreement") constitutes a comprehensive development plan, as provided in C.R.S. §29-20-105(2), for the properties affected by this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:
1. **Boundary Between Windsor and Timnath.** Exhibit A attached hereto and incorporated herein depicts the Urban Growth Management Areas ("UGMAs") of both municipalities. Windsor agrees that it shall not annex any property located within the Timnath UGMA as depicted in the attached Exhibit A. Timnath agrees that it shall not annex any property located in the Windsor UGMA as depicted in the attached Exhibit A.

2. **Referrals.** In the event that either Party receives a petition or land use application for annexation, zoning, or development of property within their respective UGMA, but adjacent to the common boundary between them, such request shall be referred to the other Party for review and comment at least thirty (30) days prior to the public hearing on the request.

3. **Timnath/Windsor Joint Planning Area.** Exhibit A depicts an area extending approximately one-quarter mile north and south of the Timnath UGMA southern boundary, east of County Road 5, west of the County Line between Weld and Larimer Counties and north of the alignment of County Road 32E, which the parties have agreed is a Joint Planning Area. In the event that either party receives an annexation petition for any property within such area, it shall work with the other party to agree on the appropriate land use for such property prior to annexing the property. The Parties agree that land uses within the Joint Planning Area shall be limited to agriculture, open space, and single-family residential development at a density not to exceed one unit per 2.29 acres. Unless otherwise agreed by the Parties, no other uses shall be allowed within the Joint Planning Area.

4. **Cooperative Planning and Separators Between Timnath and Windsor.** The Parties desire to coordinate development plans, including roadway access and alignment of intersections along Larimer County Road 1 (Weld County Road 13) and the roadway, if any, that will become the southern boundary between their respective UGMAs. In addition, the Parties desire that there be a visual separation between Timnath and Windsor along Larimer County Road 13, and the south UGMA boundary of Timnath and the North UGMA boundary of Windsor. Such separations can be accomplished through several means, including but not limited to: public land dedication and acquisition; clustering of development away from the boundary; rural density development; preservation of floodplains; and landscaping. The Parties agree to make good-faith efforts to accomplish such visual separation as land develops along their common UGMA boundaries.
5. **Implementation of Agreement.** Upon execution of this Agreement, both Parties shall proceed to formally amend and establish their respective Comprehensive Plans as may be necessary to be consistent with the terms of this Agreement. The Parties agree to devote their best efforts, to cooperate as necessary, and to exercise good faith in implementing the provisions of this Agreement. In the event of any conflict between this Agreement and any Comprehensive or Master Plans adopted by either Party in the future, this Agreement shall control.

6. **No Third-Party Rights.** This Agreement is made solely for the benefit of the Parties hereto, and is not intended to nor shall it be deemed to confer rights to any persons or entities not named as parties hereto.

7. **Non-Compliance.** If either Party fails to comply with the provisions of this Agreement, the other Party, after providing written notification to the noncomplying Party and upon the failure of the noncomplying Party to achieve compliance within a reasonable time after such notice under the circumstances, or ninety days, whichever is less, may maintain an action in a court of competent jurisdiction in Larimer County for specific performance, injunctive, or other relief. In the event of such litigation, the prevailing Party shall be entitled to payment by the defaulting Party, of its actual attorneys fees and costs incurred.

8. **Additions and Modifications.** The Parties hereto agree that they shall cooperate with one another and Larimer County in making such additions and modifications to this Intergovernmental Agreement as may be necessary to effectuate its purposes.

9. **Term and Termination.** This Agreement shall remain in effect for a period of ten (10) years from its effective date. Thereafter, it shall be automatically renewed for successive five (5) year terms unless at least six (6) months prior to the scheduled expiration, either Party notifies the other Party of its decision that the Agreement shall not be renewed.

10. **Colorado Laws.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado with venue in Larimer County.

11. **Waiver.** A waiver of a breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a
waiver of any subsequent breach of the same or another provisions of this Agreement.

12. Notices. All notices or other communications hereunder shall be sufficient given and shall be deemed given when personally delivered, or after the lapse of ten business days following mailing by certified mail, postage prepaid, addressed as follows:

To Timnath: Town of Timnath
PO Box 17
Timnath, CO 80547
Attn: Town Administrator

To Windsor: Town of Windsor
301 Walnut Street
Windsor, CO 80550
Attn: Town Administrator

13. Effect of Invalidity. If any portion of this Agreement is finally held invalid or unenforceable by a court of competent jurisdiction as to either Party or as to both Parties, the Parties agree to take such action(s) as may be necessary to achieve to the greatest degree possible the intent of the entirety of this Agreement. If any portion of any other paragraph of this Agreement is finally held invalid or unenforceable by a court of competent jurisdiction as to either Party or as to both Parties, such invalidity or unenforceability shall not affect the other paragraphs of this Agreement, except that any corresponding right or obligation of the other Party shall be deemed invalid.

14. Amendments. This Agreement may be amended in writing only by the mutual agreement of the governing bodies of the Parties hereto.

15. Reliance by the Parties. Windsor and Timnath understand that each is relying upon all of the promises made by the other in this Agreement, and each agrees (i) not to assert to any court or other body the invalidity or unenforceability of any portion of this Agreement; (ii) to promptly notify the other Party of any legal action which might affect this Agreement; (iii) to allow the other Party to participate in such legal action as the other Party seems appropriate; and (iv) to defend this Agreement in such legal action.
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed.

TOWN OF WINDSOR, COLORADO

[Signature]
W. Wayne Miller, Mayor

TOWN OF TIMNATH, COLORADO

[Signature]
M. By colorado, Mayor

ATTEST:

[Signature]
Catherine M. Kennedy, Town Clerk

[Signature]
Carol Fischbach, Acting Town Clerk

APPROVED AS TO FORM:

[Signature]
John P. Frey
Town Attorney for Windsor

[Signature]
Kathleen E. Haddock
Town Attorney for Timnath

APPROVED AS TO CONTENT:

[Signature]
Rod Wensing
Windsor Town Administrator

[Signature]
Joseph A. Racine
Timnath Town Administrator
EXHIBIT A
PLANNING AREAS
TOWNS OF WINDSOR & TIMNATH
September 16, 2002

LEGEND

- - - - Windsor UGMA
- - - - Timnath UGMA
Timnath Overall Cooperative Planning Boundary
Timnath/Windsor Cooperative Planning Area
- - - - 100-Year Floodplain
- - - - Floodway

1 MILE
April 3, 2008

Ms. Linda Martin
Community Development Director
Town of Timnath
P. O. Box 37
Timnath, CO 80547

RE: Windsor Resolution Amending Exhibit A of the Windsor-Timnath Intergovernmental Agreement

Dear Linda:

Enclosed please find a copy of Windsor Resolution No. 2008-30 which amended the growth management area boundary which is common to our communities.

Since Windsor does not record land use map or growth management area boundary amendments, staff will not be recording this change with the Larimer County Clerk and Recorder.

It appears as if your Town Board was scheduled to approve a similar resolution at its meeting last night. If this is the case, please transmit a copy of any documents or minutes which reflect the approval of this action by Timnath. Likewise, if this has yet to be accomplished, please forward any such documents once they have been approved.

Thank you, and please let me know if further information or clarification is needed at this time.

Best regards,

[Signature]

Joseph P. Plummer, AICP
Director of Planning
jplummer@windsorgov.com

Enclosure

pc: Planning Department staff
Justin and Kate Green
An Intergovernmental Agreement
Between the Town of Timnath, Colorado and the Town of Windsor, Colorado
Regarding County Line Road Maintenance and Operations

This Agreement is made and entered into on the 3rd day of October, 2014, between the town of Timnath ("Timnath") and the Town of Windsor ("Windsor") each a municipal corporation of the State of Colorado (collectively referred to as the "Parties").

WHEREAS, the Parties’ municipal boundaries and respective Growth Management Areas (GMAs) border each other along Larimer County Road 1, also known as Weld County Road 13 (hereinafter referred to as the “County Line Road”); and

WHEREAS, the Parties agree that development within either municipality and along either side of the County Line Road will impact road construction and maintenance; and

WHEREAS, all development along the west side of County Line Road between Harmony Road and Larimer County Road 40 is located within the boundaries of Timnath, and all development along the east side of County Line Road between Harmony Road and Weld County Road 76 is either currently located within the boundaries of Windsor, or will be located within the boundaries of Windsor via future annexations; and

WHEREAS, Windsor may annex certain property, the proposed development of which is predominantly single family homes and is generally located as illustrated on Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, the Parties agree that it is in the best interests of each municipality to reach agreement on the future construction and maintenance of County Line Road and its signage, traffic signals, as necessary, and other appurtenances as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. County Line Road Corridor. This Agreement shall govern the County Line Road Corridor, which is generally described as lying along either side of a one-mile stretch of County Line Road, having its southern boundary at the intersection of County Line Road and Harmony Road (also known as LCR38 and WCR74) and having its northern boundary at the intersection of County Line Road and LCR40, as more particularly depicted on Exhibit B, attached hereto and incorporated herein by reference.
2. **Proposed Development.** The terms of this Agreement are based on the density and land use depicted in Exhibit A. If substantive changes are made to the proposed development, the Parties will evaluate whether or not the impacts to County Line Road of such development have changed and whether a new traffic impact analysis is needed.

3. **Right-of-Way Dedication.** The right-of-way within Timnath and along the west side of County Line Road is seventy feet wide. The current right-of-way along the east side of County Line Road and within Weld County is thirty feet wide. Windsor will require the developer along the east side of the County Line Road Corridor to dedicate an additional forty (40) feet of right-of-way along the east side of County Line Road upon the final platting of any such development. Said dedication shall be for the full length of County Line Road as depicted in Exhibit B. Windsor will work with Timnath to annex the additional dedicated right of way to the Town of Timnath.

4. **Road Construction.** Windsor will require the developer of property along the east side of County Line Road Corridor to construct a rural asphalt cross section street (i.e. open drainage ditch, and other elements as approved by both Timnath and Windsor town engineers and per Exhibit C) in conjunction with the construction of any streets that access County Line Road from the east within the County Line Road Corridor. The rural asphalt cross section street required under this section shall be for the full length of the County Line Road Corridor as illustrated in Exhibit B. In the event that development along the east side of the County Line Road Corridor evolves in phases, the road construction requirements of this section shall be constructed to assure that the improvements extend from each phased access to the intersection of Harmony Road and County Line Road or, to the northern terminus of any such improvements previously constructed to the south, as the case may be.

5. **Traffic Control.** Development along the County Line Road Corridor may warrant the construction of a traffic control device or devices at the intersection of County Line Road and Harmony Road. When warranted by data contained within a reliable traffic impact study, and with the concurrence of the Timnath Town Engineer, Windsor shall require the developer of property east of County Line Road and adjacent to the County Line Road Corridor to install a traffic control device or devices. Nothing herein shall prevent Windsor from entering into an agreement for the re-capture of costs from surrounding development benefitted by any traffic control device or devices. Timnath agrees to reimburse Windsor for its share of the costs of any traffic control device or devices above and beyond any private party’s fair share upon the further development of property within Timnath that is shown, via a traffic impact analysis to contribute to the need for the traffic control device or devices in question.
6. **Road Maintenance.** The costs of roadway maintenance within the County Line Road Corridor shall be borne in equal shares by the Parties. As an operational matter, Timnath will be responsible for maintenance of County Line Road in accordance with generally-accepted roadway maintenance standards. Timnath shall submit documentation of reimbursable costs incurred by Timnath during the previous twelve (12) months to Windsor by July 1 of each year, commencing 2015. Windsor shall reimburse Timnath for Windsor’s share of said costs within thirty (30) days of receipt of Timnath’s documentation. In order to assure sound budgetary practices, Timnath shall wherever practical notify Windsor by no later than August 1 of any significant reimbursable cost items anticipated for the coming twelve (12) months.

For the purposes of this Agreement, reimbursable road maintenance costs shall include but not be limited to:

a. Snow plowing.

b. Salting or other method of de-icing or snow removal.

c. Street sweeping.

d. Surface and subsurface repairs including crack sealing, pothole repair, base repair, and striping.

e. Right of way mowing and shoulder maintenance

f. Traffic control signage installation, repair and replacement.

g. Repair and replacement of traffic control devices installed pursuant to this Agreement.

h. Street light maintenance and repair or replacement, if any.

i. Sidewalk maintenance, repair or replacement, if any.

7. **Dispute of Costs.** If there is any dispute between the Parties on what constitutes eligible costs of maintenance and/or repair, the Town Managers of each municipality shall come to agreement on an appropriate resolution.
8. **Future Development and Agreement.** The Parties acknowledge that future development elsewhere along County Road Line will impact the road, but that development densities and land uses are not confirmed at this time. The Parties agree to work in good faith on future agreements or amendments to this Agreement as future developments are proposed or approved.

9. **No Third-Party Rights.** This Agreement is made solely for the benefit of the Parties hereto, and is not intended nor shall it be deemed to confer rights to any persons or entities not named as parties hereto.

10. **Non-Compliance.** If either Party fails to comply with the provisions of this Agreement, the other Party, after providing written notification to the non-complying Party and upon the failure of the non-complying Party to achieve compliance within a reasonable time after such notice under the circumstances, or ninety days, whichever is less, may maintain an action in a court of competent jurisdiction in Larimer County for specific performance, injunctive, or other relief.

11. **Additions and Modifications.** The Parties hereto agree that they shall cooperate with one another in making such additions and modifications to this Agreement as may be necessary to effectuate its purposes.

12. **Term and Termination.**

   a. **Term.** This Agreement shall be effective on the date upon which Windsor issues construction acceptance for any roadway improvements that create access to County Line Road from the property lying east of County Line Road adjacent to the County Line Road Corridor (the "Effective Date"), and shall remain effective until terminated in accordance with this section or as may be otherwise permitted by this Agreement.

   b. **Mutual Termination.** The Parties may mutually agree in writing to terminate this Agreement. A Party may refuse a request to terminate this Agreement for any or no reason.

   c. **Unilateral Termination.** Either Party may terminate this Agreement without cause or reason by providing written notice of termination ("Notice of Termination") to the other Party which notice complies with the requirements of this Agreement. Such notice shall be delivered to the other Party prior to June 30th of the calendar year preceding the calendar year in which the termination will be effective and, if so tendered, shall be effective at 11:59
p.m. on December 31 of the calendar year within which such notice is so tendered. By way of example and not limitation, if a Party desires to terminate this Agreement effective December 31, 2018, Notice of Termination must be delivered to the other Party no later than June 30, 2017 in order for the Notice of Termination to be valid and effective.

d. **Termination for Cause.** Should a Party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party which notice shall specify the non-performance, provide both a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section, "reasonable time" shall be not less than ten (10) business days.

13. **Colorado Laws.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado with venue in Larimer County.

14. **Assignment.** Neither Party may assign this Agreement without the prior express written consent of the other Party. Any attempted assignment that violates the provisions of this section shall be null and void and without effect. Nothing herein shall prevent either Party from entering into an agreement with a third party to perform services in connection with this Agreement, provided that each Party shall remain responsible for the performance of its respective obligations under this Agreement.

15. **Entirety.** This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties hereto relating to the subject matter hereof and constitutes the entire agreement between the Parties concerning the subject matter hereof.

16. **No Waiver of Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to a Party, its officials, employees, contractors, or agents, or any other person acting on behalf of a Party and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq.

17. **Cooperation Concerning Third Party Claims.** Each Party shall promptly deliver to the other Party a copy of the following document(s) after receipt:
A. Any written letter, statement, or electronic mail message received by a Party asserting harm, damage, or claim of any nature against Timnath or Windsor arising or resulting from the performance or failure to perform pursuant to this Agreement.

B. Any written notice of claim whether or not made pursuant to C.R.S. § 24-10-109 asserting that Timnath or Windsor committed or is responsible for any intentional tort or negligence occurring within County Line Road.

C. Any complaint filed in any state or federal court which names Timnath or the Windsor, or an official, officer, employee, contractor, or agent of Timnath or Windsor which complaint cites or references this Agreement or the portions of County Line Road which lie within the County Line Road Corridor.

18. **Waiver.** A waiver of a breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or another provision of this Agreement.

19. **Appropriation.** Notwithstanding the provisions in Paragraph 12, pursuant to C.R.S. § 29-1-110, any financial obligations of Timnath and Windsor contained herein that are payable after the current fiscal year are subject to annual appropriation. The Parties each represent that they have appropriated or have adequate reserve funds readily available for appropriation to meet any financial obligation that may arise following the Party’s election to terminate this Agreement. The Parties each represent to the other that this Agreement does not violate Article X, Section 20 of the Colorado Constitution (TABOR).

20. **Notices.** All notices or other communications hereunder shall be sufficient given and shall be deemed given when personally delivered, or after the lapse of ten business days following mailing by certified mail, postage prepaid, addressed as follows:

To Timnath: Town of Timnath  
Attention: Town Manager  
4800 Goodman Street  
Timnath, CO 80547

To Windsor: Town of Windsor  
Attention: Town Manager  
301 Walnut Street  
Windsor, CO 80550
21. **Severability.** If any portion of this Agreement is finally held invalid or unenforceable by a court of competent jurisdiction by a court of competent jurisdiction as to either Party or as to both Parties, the Parties agree to take such action(s) as may be necessary to achieve the greatest degree possible the intent of the entirety of this Agreement. If any portion of any other paragraph of this Agreement if finally held invalid or unenforceable by a court of competent jurisdiction as to either party or as to both Parties, such invalidity or unenforceability shall not affect the other paragraphs of this Agreement, except that any corresponding right or obligation of the other Party shall be deemed invalid.

22. **Additional Assurances.** The Parties agree to execute any additional documents or take any additional action that is necessary to carry out the intent of this Agreement.

23. **Separate Entities.** The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout.

24. **Amendments.** This Agreement may be amended in writing only by the mutual agreement of the governing bodies of the Parties hereto.

25. **Reliance by the Parties.** Windsor and Timnath understand that each is relying upon all of the promises made by the other in this Agreement, and each agrees:

   a. Not to assert to any court or other body the invalidity or unenforceability of any portion of this Agreement;

   b. To promptly notify the other Party of any legal action which might affect this Agreement;

   c. To allow the other Party to participate in such legal action as the other Party deems appropriate; and

   d. To defend this Agreement in such legal action.

*(remainder of this page intentionally left blank)*
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed.

TOWN OF TIMNATH, COLORADO

_________________________
Jill Grossman-Beilsle, Mayor

ATTEST:

_________________________
Milissa Peters, CMC
Town Clerk

TOWN OF WINDSOR, COLORADO

_________________________
John S. Vazquez, Mayor

ATTEST:

_________________________
Patti Garcia, Town Clerk
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed.

TOWN OF TIMNATH, COLORADO

[Signature]
Jill Grossman-Belisle, Mayor

ATTEST:

[Signature]
Melissa Peters, CMC
Town Clerk

TOWN OF WINDSOR, COLORADO

[Signature]
John S. Vazquez, Mayor

ATTEST:

[Signature]
Patti Garcia, Town Clerk
Town of Windsor
GIS MAP