TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 71, SERIES 2016

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF THORNTON

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 an intergovernmental agreement ("Agreement") between the Town of Timnath, Colorado and the City of Thornton, Colorado; and

WHEREAS, the City of Thornton would like to annex property to the Town of Timnath; and

WHEREAS, the Town of Timnath finds that annexing the City of Thornton’s property is beneficial to the Town; 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 FOLLOW:

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

TOWN OF TIMNATH, COLORADO
SEAL
INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF TIMNATH, COLORADO AND THE CITY OF THORNTON, COLORADO

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement"), is made and entered into to be effective the __ day of ___, 201_, by and between Town of Timnath, a Colorado municipal corporation ("Town") and the City of Thornton a Colorado municipal corporation ("Property Owner" and collectively, the "Parties") and is made concerning the real property described on Exhibits A1 through A3, attached hereto and incorporated herein by reference ("the Property"), and generally known as the "City of Thornton Properties" and Thornton Water Project Pipeline (hereinafter referred to as "the Pipeline.").

WITNESSETH:

WHEREAS, the Property consists of approximately 327.8 acres, more or less, consisting of three separate properties located north of Timnath and generally east of and adjacent to Latham Parkway (LCR1/WCR13) as illustrated on Exhibits B 1- B 3; and

WHEREAS, the Property Owner plans to install a water pipeline, generally referred to as the "Thornton Water Project Pipeline" and appurtenances (hereinafter referred to as "the Pipeline") in right of way within the Town; and

WHEREAS, it is beneficial to the Town to have the Property annexed and it is beneficial to the Property Owner to be able to install the Pipeline in Town right of way; and

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

WHEREAS, the parties acknowledge that other Thornton-owned properties within Timnath's Growth Management Area will annex to Timnath in the future.

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

AGREEMENT

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

2. Annexation of Property. The Property shall be annexed to Town by ordinance, not by election, in accordance with the terms of this Agreement, including adjacent right of way,
as shown on the annexation map attached hereto as Exhibit C1 - C8. The annexation of the Property shall be in accordance with the Colorado Municipal Annexation Act of 1965 (as amended, the "Act"), the Code and all applicable laws, and is subject to this Agreement. Property Owner agrees that it will not withdraw the annexation petition.

3. **Application of Town Laws - Town Services.** Except as expressly provided herein, all Town ordinances, regulations, codes, policies and procedures in existence and as the same may change from time to time, shall be applicable to the use and development of the Property, upon annexation. Upon annexation, the Town shall provide all customary municipal services to the Property, to the same extent and upon the same terms and conditions as such services are provided to other properties throughout the Town.

4. **Zoning and Development of the Property.** The Property will be zoned AG-Agriculture. If the Property Owner or assigns develops the Property, such development will be in accordance with a site specific development plan to be subsequently approved by the Town. The Property Owner or assigns shall take all action necessary to timely apply for and diligently pursue appropriate zoning by Town of the Property for future development. The Property, or any portion thereof, may be rezoned or the site-specific development plan amended with the consent of Town and Property Owner, but without amending or modifying this Agreement.

5. **Provisions Related to Use of the Property and Adjoining Right of Way.** The annexation of the property is a benefit to both the Town and the Property Owner. Additional terms for this agreement and to achieve this mutual benefit are provided as follows:

   a. Town will not charge the Property Owner any annexation fees typically associated with the annexation of property.

   b. Town has prepared an Annexation Assessment Report, an Annexation Impact Report, to the extent required by Colorado law, and a narrative addressing the conformance of the annexation with the Town’s Comprehensive Plan.

   c. Town has obtained letters of support from special districts agreeing to service the Property.

   d. Because the Property is not being developed at this time, the Town indefinitely suspends the requirement for a concept plan.

   e. Town hereby indefinitely suspends the requirement for a water rights report.

   f. Town will not require any infrastructure improvements except the dedication of additional right of way as illustrated on the Annexation Maps in Exhibits C 1 – C 8 until such time as the property develops or changes use.

   g. Property Owner will provide the Town with a right of first refusal to purchase the Property at market value to be determined by appraisal by a mutually agreed upon appraiser.

   h. Town will permit the Property Owner to install and maintain the Pipeline and
appurtenances in any Timnath controlled right of way on County Line Road 1/Latham Parkway.

i. Property Owner and Town will mutually agree on the location of said Pipeline within the right of way.

j. Property Owner will be responsible for road and pavement repairs and/or replacements necessitated by said Pipeline installation and maintenance.

k. Town will regulate other uses of or changes to the right of way to ensure:

i. A minimum of a 10’ (ten foot) horizontal separation from the centerline of the Pipeline and an 18” (eighteen inch) vertical separation of the Pipeline and future utilities. Additional separation may be appropriate in some circumstances and will be mutually agreed to by the Town’s Engineer and the Property Owner’s Engineer.

ii. The Parties will mutually agree on appropriate separations from Pipeline appurtenances to be determined on a case by case basis.

iii. Town will require a minimum 4’ (four foot) cover over the Pipeline for any and all work in the right of way. The Parties will share any master plan information on right of way or Pipeline cross sections and grades to assure compatibility.

iv. Town will not allow any tree or shrub planting that would impact the Property Owner’s ability to operate and maintain the Pipeline and appurtenances.

v. Property Owner shall be responsible for the cost of relocating others’ (including but not limited to service providers) infrastructure that is required by the construction of the Pipeline and appurtenances.

vi. Town will require any relocation or modification of the Pipeline and appurtenances at others’ costs when it is required by others’ projects except where existing easements require otherwise.

vii. The Parties agree to coordinate with each other when work or maintenance is expected to be performed on the Pipeline or the right of way that may impact the other Party.

6. **Water Utilities.** Property Owner shall obtain water service from North Weld County Water District when developed.

7. **Sanitary Sewer Utilities.** Property Owner shall obtain sewer service from Boxelder Sanitation District when developed.

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

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

10. **Fire Protection Services.** The Property Owner acknowledges and represents that Property Owner has submitted a Petition for Exclusion from the fire protection district currently serving the Property, as necessary, and that Property Owner is already located within or has submitted a Petition for Inclusion into the Poudre Valley Fire Protection District.

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

12. **Covenants Run With the Land.** This Agreement and the annexation map shall be recorded in the real estate records of Larimer County. **The provisions of this Agreement shall constitute covenants or servitudes that shall touch, attach to and run with title to the Property. The burdens and benefits of this Agreement shall bind and inure to the benefit of all estates and interests in the Property and all successors in interest of the parties to this Agreement, except as may be otherwise expressly provided in this Agreement.**

13. **Cure of Legal Defects.** In the event that the annexation or zoning of the Property or any portion of this Agreement, is declared void or unenforceable by final court action, meaning that no appeal can be made or the time to appeal has expired, Parties shall cooperate to cure any legal defects cited by the court, and immediately upon such cure, Town shall reinstitute and complete proceedings to annex and zone the Property according to the terms of this Agreement and to otherwise carry out the terms and provisions hereof. The Property Owner shall reapply for annexation when the Property becomes eligible for annexation as determined by the Town.

14. **Acknowledgements.** Parties acknowledge the Property Owner currently has no plans to develop said property and can maintain its use for agricultural purposes and retain AG-Agriculture zoning until such time as development is proposed for the site.

15. **Infrastructure Standards.** Parties acknowledge and agree that Town Code and Town’s then-existing design and construction standards shall be applicable to all future construction of items historically considered to be public in nature, including generally, water lines (except the Pipeline as provided herein), sewer lines, streets, drainage improvements, park improvements, traffic safety and control devices, etc. common to similar developments in Town.
16. **Breach by Property Owner - Town's Remedies.** In the event of a breach of any of the terms and conditions of this Agreement by Property Owner, and until such breach is corrected, the Town may take such actions as are permitted and/or authorized by the ordinances of the Town, this Agreement, and/or other law as the Town reasonably deems necessary in order to protect the public health, safety and welfare; to protect lot buyers and builders; and to protect the citizens of Town from undue hardship and undue risk. These remedies include, but are not limited to:

a. The refusal to issue any building permit;

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

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

d. Disconnection of the Property from Town;

e. Specific performance of this Agreement;

f. Placement of a lien on the Property to be collected with the property taxes;

g. Any other remedy available at law or equity.

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

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

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

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

20. Notice. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by facsimile, or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of Parties herein set forth. All notices so given shall be considered effective on the date of delivery, or facsimile if sent during normal business hours, or seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which further notices shall be sent.

Notice to Town:
Town of Timnath
4800 Goodman Street
Timnath, Colorado 80547
Telephone: (970) 224-3211

with copy to:
Robert Rogers, Esq.
White, Bear & Ankele Professional Corporation
2154 E. Commons Ave., Suite 2000
Centennial, CO 80122
Telephone: (303) 858-1800

Notice to Property Owner:
City of Thornton
9500 Civic Center Drive
Thornton, CO 80229

Telephone: 303-538-7200

with a copy to:
City Attorney
City of Thornton
9500 Civic Center Drive
Thornton, CO 80229
Telephone: 303-538-7210

21. Assignment. Property Owner shall have the right to assign or transfer all or any of its interests, rights, or obligations under this Agreement to any person or entity, directly or indirectly, controlling, controlled by, or under common control with Property Owner (an "Affiliate") of Property Owner, without the consent of the Town. The terms "controlling," "controlled by," or "under common control with," shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity whether through the ownership of voting securities or otherwise. Property Owner shall also have the right to assign or transfer all or any of its interests, rights, or obligations under this Agreement to
any other person or entity having the legal authority and financial ability to perform the obligations being assigned to such person or entity after at least thirty (30) days prior written notice to Town. Upon such notice and written assumption of the obligations of Property Owner by an assignee, the assignor shall be relieved of any further obligations or liability with respect to the performance of any of the duties or obligations of Property Owner arising after the date such duties and obligations are assumed by the Assignee.

22. **Authority to Execute Documents.** This Agreement and Thornton’s City Council’s approval of it authorize the Thornton City Manager to execute the Town of Timnath’s annexation application and petition or other documents as needed to allow the Town of Timnath to process the application as long as there are no changes to the terms of this Agreement.

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

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

25. **Severability.** If any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid, and Parties shall cooperate to cure any such defect.

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

27. **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.
28. **No Duress.** Parties agree that this Agreement is freely and voluntarily executed by them after extensive negotiations between them and an opportunity for each party to obtain legal advice.

29. **Execution and Counterparts.** This Agreement may be executed and filed in any number of counterparts, all of which when taken together shall constitute the entire agreement of Parties. Signature pages may be removed from any counterpart and attached to another counterpart to constitute a single document.

30. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Should any party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that exclusive venue of such suit or action shall be in Larimer County, Colorado.

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

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

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

34. **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.

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

TOWN: TOWN OF TIMNATH, COLORADO,
       A Municipal Corporation

ATTEST: ____________________________
        Jill Grossman-Belisle, Mayor

           ________________
       Milissa Peters, Town Clerk

PROPERTY OWNER: CITY OF THORNTON

By: ____________________________
    Heidi Williams, Mayor

STATE OF COLORADO )
       ) ss.
COUNTY OF ________ )

The foregoing instrument was acknowledged before me this ___ day of ___________201__, by ________________________________.

WITNESS my hand and official seal.

Notary Public
My Commission expires:__________