TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 89, SERIES 2016

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF TIMNATH AND THE CITY OF FORT COLLINS REGARDING MAIN STREET/LARIMER COUNTY ROAD 5

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 Regarding Main Street/Larimer County Road 5 between the Town of Timnath and the City of Fort Collins (hereinafter referred to as the "Parties"); and

WHEREAS, portions of Main Street/Larimer County Road 5 (hereinafter referred to as the "Road") lie within the city of Fort Collins and portions lie within the Town of Timnath; and

WHEREAS, the Serratoga Falls Subdivision lies on Main Street/Larimer County Road 5 but is being developed within and according to the standards of the Town of Timnath; and

WHEREAS, the Parties wish to assure that the Road is improved to comparable standards and cross-sections to an ultimate four land arterial.

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
EXHIBIT A

AGREEMENT
INTERGOVERNMENTAL AGREEMENT
(Regarding Main Street/Larimer County Road 5)

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered
into on the ___ day of __________, 2016, between THE TOWN OF TIMNATH,
COLORADO ("Timnath") and THE CITY OF FORT COLLINS, COLORADO ("Fort Collins")
each a municipal corporation of the State of Colorado (collectively referred to as the "Parties").

RECITALS

WHEREAS, Timnath has approved Serratoga Falls Subdivision along and immediately
adjacent to Main Street/Larimer County Road 5 (hereinafter referred to as "Main Street/CR5"),
north of Prospect Road; and

WHEREAS, Timnath has entered into a Subdivision Improvement Agreement with the
developers of Serratoga Falls (the "Developer(s)") requirements to improve Main
Street/CR5 per the Timnath Land Development Code; and

WHEREAS, portions of Main Street/CR5 lie within Timnath’s jurisdiction and portions
lie within Fort Collins’ jurisdiction; and

WHEREAS, both Parties seek to have Main Street/CR5 improved to comparable
standards and cross-sections to an ultimate four lane arterial, but the Parties’ requirements for
timing of these improvements differ; and

WHEREAS, the Parties agree that it is in the best interests of the citizens of each
municipality to enter into an intergovernmental agreement regarding the future construction of
Main Street/CR5; and

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

1. Improvement of Main Street/CR5. Along the western boundary of the Serratoga Falls
   Subdivision, the right of way of approximately the first one thousand three hundred
   (1,300) feet of Main Street/CR5 north of Prospect Road (the “Improvement Section”),
is planned to be widened from a two lane arterial to a four lane arterial. The
   Improvement Section is currently annexed to Fort Collins. The Serratoga Falls
   Subdivision is annexed to and being developed under the criteria and standards of the
   Town of Timnath, and the Town’s criteria for the financial responsibility for future
   roadway widening varies from that of Fort Collins. Because of these differences, the
   Town of Timnath hereby assumes the responsibility for the cost to widen the east lane
of the Improvement Section, from the existing one lane to the planned interim two lane arterial, associated intersection improvements when warranted in the future, and widening the east side of the road to City of Fort Collins four lane arterial standards when warranted. The City of Fort Collins hereby assumes the responsibility for widening the west lane of the Improvement section at such time as Fort Collins and Timnath determine and mutually agree said improvements are necessary. Further, this Agreement does not alleviate the property owner on either side of the Improvement Section from responsibility to construct and/or pay for their half of the Town’s two lane arterial section (including but not limited to the curb, gutter, sidewalk, draining infrastructure, parkway improvements and bridge structure extension if needed) upon the development of said properties as required by the Town of Timnath Code. Nor does it alleviate the property owner on the west side (currently within City of Fort Collins City limits) from constructing the developments curb, gutter and sidewalk in the Improvement Section per City of Fort Collins standards, codes, and requirements. Timnath’s two lane arterial section shall be constructed at such time as Fort Collins and Timnath determine and mutually agree said improvements are necessary.

2. **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.

3. **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.

4. **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.

5. **Term and Termination.**

   a. **Term.** This Agreement shall be effective upon the date first written above 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.

6. 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.

7. 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.

8. 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.

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

10. 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.

11. 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 Fort Collins 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 Fort Collins committed or is responsible for any intentional tort or negligence occurring within Main Street/CR 5.

C. Any complaint filed in any state or federal court which names Timnath or Fort Collins, or an official, officer, employee, contractor, or agent of Timnath or Fort Collins which complaint cites or references this Agreement or the portions of Main Street/CR 5 described herein.

12. **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.

13. **Appropriation.** Notwithstanding the provisions in Paragraph 12, pursuant to C.R.S. § 29-1-110, any financial obligations of Timnath or the City of Fort Collins contained herein are subject to annual appropriation. The Parties each represent to the other that this Agreement does not violate Article X, Section 20 of the Colorado Constitution (TABOR).

14. **Notices.** All notices or other communications hereunder shall be sufficient and 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 Fort Collins: City of Fort Collins
                    Attention: City Manager
                    300 La Porte Avenue
                    Fort Collins, CO 80521

15. **Severability.** 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 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.
16. **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.

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

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

19. **Reliance by the Parties.** Fort Collins 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 as of the day and year first above written.

TOWN OF TIMNATH, COLORADO

Jill Grossman-Belisle, Mayor

ATTEST:

Milissa Peters, CMC
Town Clerk

City of Fort Collins, Colorado

Wade Troxell, Mayor

ATTEST:

Wanda Winkelmann, City Clerk

APPROVED AS TO FORM:

Brad Yatabe, Assistant City Attorney