TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 95, SERIES 2016

A RESOLUTION APPROVING INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF TIMNATH, COLORADO AND THE FORT COLLINS-LOVELAND WATER DISTRICT

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 with the Fort Collins-Loveland Water District (District) regarding the placement and of the Town of Timnath logo on a District water tank; and

WHEREAS, the District and the Town have entered into a interim Memorandum of Understanding regarding the painting of the Town logo on the water tank located at Timnath Reservoir and ongoing lease arrangements for said use; 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.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON NOVEMBER 8, 2016.

TOWN OF TIMNATH, COLORADO

[Signature]
Jill Grossman-Belisle, Mayor
ATTEST:

Similis Peters
Milissa Peters, CMC
Town Clerk
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE TOWN OF TIMNATH, COLORADO
AND THE FORT COLLINS-LOVELAND WATER DISTRICT

THIS AGREEMENT is made and entered into as of this ____ day of November, 2016
(the “Effective Date”), by and between the TOWN OF TIMNATH, a home-rule municipal
corporation of the State of Colorado (the “Town”), and FORT COLLINS-LOVELAND WATER
DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the
“District”). The Town and the District are collectively referred to as the Parties.

RECITALS

WHEREAS, the District has constructed an elevated water storage tank at 5800 East
(Larimer) County Road 40, Fort Collins, Colorado (the “Tank”); and

WHEREAS, the Town requested the Town’s logo be placed on the top of the southwest
portion of the Tank and the District is agreeable to do so; and

WHEREAS, the Board of Directors of the District approved the placement of the logo on
the Tank at a meeting on May 17, 2016; and

WHEREAS, the Parties entered into an interim memorandum of understanding (the
“MOU”) to be followed by a formal intergovernmental agreement, which MOU was approved
by the Town in Resolution No. 49, Series 2016 on June 14, 2016; and

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

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

COVENANTS AND AGREEMENTS

1. The District’s Tank. The District has constructed the Tank adjacent to the Timnath
Reservoir. This Agreement does not convey, transfer or assign any ownership, rights or
privileges to any District property to the Town. The District retains sole discretion to determine
any future uses of the Tank including, but not limited to, construction, piping, additions, cabling,
lighting, antennas, and communication equipment. The District agrees, however, to coordinate
with the Town on any requests for another logo or signage, repairs, maintenance, and recoating
of the Tank that may affect the logo. The District reserves the right to approve the use of any
pictures, advertising or reference to the Tank by the Town. Should the district unilaterally paint
over the logo without consultation with the Town, the Town may terminate this Agreement.

2. The Town Logo. The Town shall be responsible for any damages and costs that
may arise from the replacement or repainting of the logo on the Tank and is responsible for any
violation of local, county, state or federal laws, regulations, ordinances, or permits caused by the placement of the logo on the Tank. The Parties agree to work together to accommodate any requests by the Town to change or modify the logo. The Town further agrees that so long as TST, Inc. has a contractual obligation to the District for the engineering and inspection of the Tank, TST, Inc. shall not represent the Town in matters regarding the Tank.

3. **Reimbursement of Costs.** The Town will reimburse the District for all costs associated with the placement of the Town’s logo on the Tank, including but not limited to, painting maintenance, placement, installation, materials, insurance, inspection, engineering, review, District personnel time, and legal costs (the “Costs”). Payment for the Costs shall be made by the Town within thirty (30) days of receipt of a satisfactory and detailed invoice.

4. **Annual Lease Fee and Term.** Initially, so long as the Town’s logo is on the Tank, the Town shall pay a base rent of two thousand four hundred dollars ($2,400) for the first year of the lease (“Base Rent”). The Base Rent shall be adjusted each January 1 beginning in 2018 during the term of the lease by an amount equal to the product of the Base Rent multiplied by the percentage increase in the “Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average-All Items (1982-1984=100)” (“CPI”), published by the Bureau of Labor Statistics of the United States Department of Labor over a the previous 12 month period. The initial term of this Agreement shall be for a period of fifteen (15) years commencing on the Effective Date. This Agreement shall automatically renew for subsequent five (5) year periods, each upon the same terms as set out herein, unless either Party provides the other Party with at least ninety (90) days prior written notice of its intention to terminate this Agreement. Notwithstanding the foregoing, the performance of either Party under this Agreement is subject to annual appropriations.

5. **Indemnification.** To the extent permitted by law, the Town agrees to indemnify and hold harmless the District, its officers and employees, from and against all liabilities, claims and demands which may arise from the negligent acts or omissions of the District which are incident to fulfillment by the District of its duties under this Agreement, provided that such act or omission by the District’s officers or employees occurred during the performance of their duties, within the scope of their employment and was incident to the fulfillment by the District of its duties under this Agreement. The Town’s indemnification obligations do not extend to gross negligence or intentional torts of the District or its officers or employees. The Parties agree that all such liabilities, claims and demands shall be subject to any notice requirements, defenses, immunities or limitations to liability that the Town may have under the Colorado Governmental Immunity Act (Section 24-10-101, C.R.S., et seq.) and any other defenses, immunities or limitations to liability available to the Town under the law.

6. **Subject to Annual Appropriation and Budget.** The Parties do not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of the Parties pursuant to this Agreement requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations. Each Party expressly understands and agrees that the other Party’s obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by either Party, or as creating a multiple-fiscal year direct or indirect debt.
or other financial obligation whatsoever, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of either Party’s funds.

7. 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 of 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 Town: April D. Getchius, Town Manager
Town of Timnath
4800 Goodman Street
Timnath, CO 80547

To the District: Chris Matkins, General Manager
Fort Collins – Loveland Water District
5150 Snead Drive
Fort Collins, CO 80525

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 to change its address.

8. Good Faith. Except for any matters expressly stated to be in the sole discretion of a Party, the Parties shall act in good faith and shall not act unreasonably, arbitrarily or capriciously in the performance of their obligations under this Agreement. Any consent required to be given pursuant to the terms of this Agreement, unless stated to be in the sole discretion of one Party, shall not be unreasonably withheld, conditioned, delayed, or denied.

9. 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.

10. 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.

11. 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. 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 its reasonable attorneys’ fees from
the other Party.

12. **Governing Law and Venue.** This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for any dispute shall be in the District Court for Larimer County, Colorado.

13. **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.

14. **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.

15. **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 Town and the District 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 District and the Town shall be for the sole and exclusive benefit of the District and the Town.

16. **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.

17. **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.

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

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

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

**TOWN:**

**THE TOWN OF TIMNATH**

[Signature]

Jill Grossman-Belisle, Mayor
ATTEST:

Milissa Peters, CMC
Town Clerk

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

General Counsel to the Town
DISTRICT:

FORT COLLINS - LOVELAND WATER DISTRICT

________________________
Officer of the District

ATTEST:

________________________
Secretary

APPROVED AS TO FORM:

________________________
General Counsel to the District
EXHIBIT A

AGREEMENT
MEMORANDUM OF UNDERSTANDING

NOW COME Fort Collins – Loveland Water District ("District"), being a Colorado special district and the Town of Timnath ("Town"), being a home rule municipality, agree as follows:

Whereas: The District is currently constructing an elevated water storage tank ("Tank") at 5800 East (Larimer) County Road 40, Fort Collins, Colorado and the Town is desirous of placing the Town’s logo on the top of the southwest portion of the Tank.

Whereas: The parties acknowledge that the schedule of construction of the tank and placement of the logo do not allow adequate time to develop and execute an Intergovernmental Agreement ("IGA") prior to the placement of the logo.

Whereas: The Town acknowledges and agrees that time is of the essence and to avoid any delay of the construction and completion of the District’s Tank.

Whereas: The Board of Directors approved the placement of the logo on the tank at their Board meeting of May 17, 2016. The Board directed staff to develop an IGA between the District and the Town that identifies the District’s requirements and conditions for the placement of the logo on the Tank.

Whereas: This Memorandum of Understanding ("MOU") is intended to set forth the general requirements in the interim period for developing and executing an IGA.

Therefore the requirements and conditions are set forth, but not limited to, as follows:

The Town agrees to reimburse the District for all costs associated with the placement of the logo on the Tank, including but not limited to, painting, maintenance, placement, installation, materials, insurance, inspection, engineering, review, District personnel time, legal, etc. The Town further agrees that TST Inc. is under contract with the District for the engineering and inspection of the District’s Tank and therefore shall not represent the Town in matters regarding the Tank.

The Town agrees to remit payment promptly no later than the 30 days from the date of the invoice.

The Town shall submit the logo design, color, size and placement location, to scale, for District approval which will not be unreasonably denied.

To the extent authorized by law, the Town agrees to indemnify and hold harmless the District and their respective officers and employees, against all liabilities, claims and demands which arise from any negligent act or omission of the District which are incident to fulfillment by the District of its duties under the terms of this MOU, or of its officers or employees, provided that such act of omission by the District’s officers or employees occurred during the performance of their duties and within the scope of their employment and incident to fulfillment by the District of its duties under the terms of this MOU. The Town’s indemnification and hold harmless obligations to not extend to gross negligence or intentional torts of the District or its officers or employees.

This agreement does not convey, transfer or assign any ownership, rights or privileges to District facilities and properties.
The District retains sole discretion to determine any and all future uses such as, but not limited to, construction, piping, additions, cabling, lighting, antennas, communication equipment, logos, etc.

The Town shall be responsible for any damages and costs that may arise from the placement of the logo on the District’s Tank.

The District will coordinate with the Town on any requests for another logo or signage.

The District reserves the right to approve any use of pictures, advertising or reference to the District’s Tank.

The Town agrees to provide responses to requests, by mail or email, in a timely manner.

The Town is responsible for any violation of local, county, state or federal laws, regulations, ordinances, permits etc. by the placement of the Town’s logo on the District’s tank.

The Town agrees to pay an annual lease fee of $2,400.00 for the logo to be placed on the Tank as determined by the District. The fee and annual period shall be determined and included in the proposed IGA.

Any notice, request, demand or approval, other than invoice billing, or other communication required or permitted hereunder will be in writing and will be deemed to have been given notice when personally delivered or deposited in the United States mail with the proper postage and address as follows:

**District:**  
Chris Matkins, General Manager  
Fort Collins – Loveland Water District  
5150 Snead Drive  
Fort Collins, CO 80525

**Town:**  
April D. Getchius, Town Manager  
Town of Timnath  
4800 Goodman Street  
Timnath, CO 80547

Should the parties be unable to agree upon an IGA the Town shall reimburse the District for all costs associated with the placement and removal of the logo from the Tank.
The provisions hereof shall be binding on and inure to the benefit of the heirs, successors, assigns, and representatives of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding effective as of the 15th day of June, 2016.

Town of Timnath

By: [Signature]

April D. Getchius, Town Manager

State of Colorado } ss.
County of Larimer }

The foregoing instrument was acknowledged before me this 15th day of June, 2016 by April D. Getchius, Town Manager of the Town of Timnath.

Notary Public

Fort Collins – Loveland Water District

By: [Signature]

Chris Matkins, General Manager

State of Colorado } ss.
County of Larimer }

The foregoing instrument was acknowledged before me this 15th day of June, 2016 by Chris Matkins as General Manager of the Fort Collins – Loveland Water District.

Notary Public