TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 108, SERIES 2016

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH TIMNATH RANCH METRO DISTRICT FOR THE DELIVERY OF NON POTABLE WATER TO THE TIMNATH COMMUNITY PARK

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 IGA with Timnath Ranch Metro District for the delivery of Non Potable Water to the Timnath Community Park; and

WHEREAS, the Timnath Ranch Metro District and the Timnath Ranch Developer have been willing and cooperative partners with the Town to provide non potable water service to the Timnath Community Park; and

WHEREAS, the Town Council is familiar with the Intergovernmental Agreement and finds it to be in the best interest of the Town, its residents, and the general public and authorizes the Town Manager to execute the agreement on behalf of the Town.

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 DECEMBER 7TH, 2016.

TOWN OF TIMNATH, COLORADO

[Signature]
Jill Grossman-Belisle, Mayor
ATTEST:

Milissa Peters, CMC
Town Clerk
EXHIBIT A
AGREEMENT
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE TOWN OF TIMNATH, COLORADO
AND
TIMNATH RANCH METROPOLITAN DISTRICT NO. 1

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into as of this 7th day of December, 2016, by and between the TOWN OF TIMNATH, a home-rule municipal corporation of the State of Colorado (the “Town”), and TIMNATH RANCH METROPOLITAN DISTRICT NO. 1, 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 was organized to provide those services and to exercise powers as are more specifically set forth in the Consolidated Service Plan dated July 5, 2007 (“Service Plan”); and

WHEREAS, the District provides non-potable water to its taxpayers, residents and property owners; and

WHEREAS, the Town desires to reimburse the District for non-potable water provided by the District for the Timnath Community Park located at 5500 Summerfields Parkway, which is owned by the Town, and potentially future Town Parks within the District Boundary; 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 (“Agreement”).

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. Term. The term of this Agreement shall commence on the date that both Parties have signed the Agreement and shall continue thereafter subject to annual appropriation, unless terminated earlier by either party with one hundred and twenty (120) days written notice.

2. Water. The District will allow the Timnath Community Park located at 5500 Summerfields Parkway, and potentially future Town Parks within the District Boundary, to be irrigated from the District’s water supply. The Town will reimburse the District at seventy-five percent (75%) of the lowest delivery rate per 1,000 gallons as shown on the Fort Collins - Loveland Water District Monthly Water Service Rates, attached hereto as Exhibit A and incorporated by reference. The Parties agree the most recent Fort Collins – Loveland Water
District Monthly Water Service Rates shall control in the event the Monthly Water Service Rates are modified after this Agreement is executed.

3. **Operations and Maintenance Costs.** The Parties agree the Town shall not be responsible for any costs related to the operations and maintenance of the water supply system.

4. **Invoices.** Invoices for the water shall be submitted monthly by the District to the Town and the Town shall pay the invoice within thirty (30) days of receipt.

5. **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.

6. **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

   **With a copy to:**
   WHITE BEAR ANKELE TANAKA & WALDRON
   Attorneys at Law
   Attention: Robert G. Rogers, Esq.
   2154 E. Commons Avenue, Suite 2000
   Centennial, CO 80122
   rrogers@wbapc.com

   **To the District:**
   Pinnacle Consulting Group, Inc.
   1627 E. 18th Street
   Loveland, CO 80538

   **With a copy to:**
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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. **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.

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

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

TOWN:

THE TOWN OF TIMNATH

April Getchius, Town Manager

ATTEST:

__________________________
Milissa Peters, CMC
Town Clerk

APPROVED AS TO FORM:

**WHITE BEAR ANKELE TANAKA & WALDRON**
Attorneys at Law

__________________________
General Counsel to the Town
DISTRICT:
TIMNATH RANCH METROPOLITAN DISTRICT NO. 1

________________________________________
Officer of the District

ATTEST:

________________________________________
Secretary

APPROVED AS TO FORM:

________________________________________
General Counsel to the District
EXHIBIT A
Fort Collins – Loveland Water District
Monthly Water Service Rates
## Monthly Water Service Rates

Effective January 1, 2016

<table>
<thead>
<tr>
<th>Water Tap Size</th>
<th>Base fee per Month</th>
<th>Rate per 1,000 gallons (8,000 gallons or less)</th>
<th>Rate per 1,000 gallons (8,001 to 15,000 gallons)</th>
<th>Rate per 1,000 gallons (15,001 gallons or more)</th>
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<td>5/8&quot; &amp; 3/4&quot;</td>
<td>13.40</td>
<td>1.58</td>
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<td>2.97</td>
</tr>
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<td>2.21</td>
<td>2.97</td>
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<td>4&quot;</td>
<td>203.80</td>
<td>1.58</td>
<td>2.21</td>
<td>2.97</td>
</tr>
</tbody>
</table>

Mobile Home Parks, Apartments & other Multi-Unit dwellings will be billed for the number of units in this manner.

<table>
<thead>
<tr>
<th>Number of units x</th>
<th>Base fee</th>
<th>Rate per 1,000 gallons (8,000 gallons or less)</th>
<th>Rate per 1,000 gallons (8,001 to 15,000 gallons)</th>
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<td>1.56</td>
<td>2.21</td>
<td>2.97</td>
</tr>
</tbody>
</table>

### Other Charges

- **Late Fee**: Delinquent accounts (1 missed payment) will be assessed a late fee.
- **Discontinuation of Service Notice**: A fee will be charged if it becomes necessary to notify you of discontinuation of service for non-payment.
- **Insufficient funds charge**: A fee will be charged if a payment you make to the District is returned to us for insufficient funds or is uncollectible in any way.

Rates are subject to change at any time.