



Timnath

Agenda

Timnath Development
Authority Meeting
Tuesday, May 8, 2018
Immediately Following the
Town Council Meeting @
6:00 PM
4800 Goodman Street,
Timnath, Colorado

Page

1. CALL TO ORDER AND ROLL CALL

Chairperson Jill Grossman-Belisle
Co-Chair Aaron Person
Commissioner Bill Neal
Commissioner Rick Collins
Commissioner Lisa Laake

2. CONSENT AGENDA

- 3 - 4 2.1. Approval of the March 27, 2018, Timnath Development Authority Meeting Minutes
[TDA 032718MINUTES-final](#)
- 5 - 6 2.2. Approval of the TDA Check Register
[TDA Communication 2018.5.8](#)
[TDA 05.08.2018](#)

3. BUSINESS

- 3.1. **EXECUTIVE SESSION:** “For the purposes of discussion concerning the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interests under Section §24-6-402(a), C.R.S.; discussion concerning personnel matters under §24-6-402(4)(f), C.R.S.; discussion regarding positions relative to matters that may be subject to negotiations and development of a strategy for negotiations under §24-6-402(4)(e), C.R.S.; and conferences with the Town’s attorney for purposes of receiving legal advice on specific legal questions under §24-6-402(4)(b), C.R.S.”

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- 3.2. **RESOLUTION NO. TDA-5, SERIES 2018**, A Resolution Approving the Timnath Development Authority's Engagement of Brownstein Hyatt Farber Schreck, LLP
[TDA Communication Brownstein Engagement, 2018-05-01](#)
[TDA Resolution No. TDA-05, Series 2018 Approving Engagement of Brownstein, 2018-05-01](#)
[Brownstein Engagement Letter, 2018-05-01](#)

4. ADJOURNMENT

Timnath Development Authority Agenda
Regular Meeting Minutes
Tuesday, March 27, 2018, at 6:00 p.m.
4800 Goodman Street, Timnath, Colorado

1. CALL TO ORDER AND ROLL CALL

Chairperson Grossman-Belisle called to order the regular meeting of the Timnath Development Authority on March 27, 2018, at 6:34 p.m.

Present:

- a. Chairperson Jill Grossman-Belisle
- b. Co-Chairperson Bryan Voronin
- c. Commissioner Bill Neal
- d. Commissioner Aaron Pearson
- e. Commissioner Paul Steinway

Also Present:

- a. Milissa Peters, Town Clerk
- b. Robert Rogers, Contracted Town Attorney
- c. Brian Williamson, Contracted Town Planner
- d. Randall Black, Timnath Resident
- e. Eric Sutherland, Fort Collins Resident

2. CONSENT

a. Approval of the March 20, 2018, Timnath Development Authority Meeting Minutes
Commissioner Neal moved to approve THE CONSENT AGENDA. Commissioner Pearson seconded the motion. The motion passed unanimously by voice vote.

3. BUSINESS

- a. **RESOLUTION NO. TDA-04, SERIES 2018**, A Resolution Authorizing the Timnath Development Authority to Obtain a Loan for Financing the Costs of Capital Improvements and Paying the Costs of Obtaining the Loan; Approving the Form of a Third Amended and Restated Loan Agreement in connection therewith; and authorizing the execution, delivery and performance of such agreement and related documents
 - Mr. Rogers spoke to the Commissioners about the proposed resolution.
 - Mr. Black asked why the meetings were rearranged and about the total indebtedness the Town will have by the end of the loan. Mr. Rogers told Mr. Black that he would have the finance director respond to his debt questions after the meeting.
 - Mr. Sutherland spoke to the Commissioners about applicability and stated that acting on the proposed resolution was illegal, and that legal action would be taken immediately.
 - Commissioner Neal asked Mr. Rogers about his view and Mr. Rogers stated that bond counsel, general counsel, the county commission and reputable

others would disagree with Mr. Sutherland and are comfortable moving forward.

Commissioner Voronin moved to approve RESOLUTION NO. TDA-04, SERIES 2018, A Resolution Authorizing the Timnath Development Authority to Obtain a Loan for Financing the Costs of Capital Improvements and Paying the Costs of Obtaining the Loan; Approving the Form of a Third Amended and Restated Loan Agreement in connection therewith; and authorizing the execution, delivery and performance of such agreement and related documents. Commissioner Neal seconded the motion. The motion passed unanimously by voice vote.

4. ADJOURNMENT

Chairperson Grossman-Belisle adjourned the meeting at 6:44 p.m.

The Timnath Development Authority approved the March 27, 2018, TDA Meeting Minutes on April 10, 2018.

TIMNATH DEVELOPMENT AUTHORITY

Jill Grossman-Belisle, Chairperson

ATTEST:

Milissa Peters, CMC
Secretary



TIMNATH DEVELOPMENT AUTHORITY COMMUNICATION

Meeting Date: 5/8/18	Item: Ayres & Boxelder Payments	Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Discussion <input type="checkbox"/> For Consent <input checked="" type="checkbox"/>
Presented by: Don Taranto, Town Engineer		
EXECUTIVE SUMMARY: The Timnath Development Authority is responsible for the payment of various contracts. The Ayres Associates payments are per our agreement with Ayres Associates as it relates to the LOMR for the Boxelder drainage improvements in the amount of \$7,815.35. The Boxelder payments are per our agreement with the Boxelder Regional Storm Water Authority for \$3,147.88 for administration expenses for the regional storm water system improvements.		
STAFF RECOMMENDATION: Staff recommends approval of these payments.		
KEY POINTS/SUPPORTING INFORMATION: Payments for obligations per our contract with Ayres Associates and our IGA with the Boxelder Authority to pay 25% of BRSWA expenses for regional storm water improvements.		
ADVANTAGES: Satisfies our contractual obligations.		
DISADVANTAGES: None.		
FINANCIAL IMPACT: Monies are budgeted for these expenses.		
RECOMMENDED MOTION: This motion should be part of the motion approving the consent agenda items.		

TDA Payment Approval

Vendor	Invoice Number	Description	Amount	Check total
Ayres	174002	LOMR for Boxelder	\$7,815.35	\$7,815.35
Boxelder	1270	Construction	\$2,946.13	\$2,946.13
Boxelder	1271	Construction	\$201.75	\$201.75
			Total	\$10,963.23



TIMNATH DEVELOPMENT AUTHORITY

Meeting Date: May 8, 2018	Item: Resolution Approving the Timnath Development Authority's Engagement of Brownstein Hyatt Farber Schreck, LLP (the " Resolution ").	Resolution <input checked="" type="checkbox"/>
Presented by: Robert Rogers Attorney		Discussion <input type="checkbox"/> For Information <input type="checkbox"/>
EXECUTIVE SUMMARY: The Timnath Development Authority (the " TDA ") has been named as an Indispensable Party in Larimer County District Court Case Number 2018CV149 entitled <i>Sutherland v. The City of Fort Collins; Steve Miller; and Irene Josey</i> (the " Litigation "). Brownstein Hyatt Farber Schreck, LLP will serve as legal counsel to the TDA in connection with matters related to the Litigation.		
STAFF RECOMMENDATION: Staff recommends approval of this Resolution.		
KEY POINTS/SUPPORTING INFORMATION: <ul style="list-style-type: none"> It is highly recommended that the TDA retain litigation counsel to represent the TDA in the Litigation. Brownstein Hyatt Farber Schreck, LLP is a nationally recognized firm that has been previously engaged by the Town of Timnath and the TDA. 		
ADVANTAGES: Brownstein Hyatt Farber Schreck, LLP will provide legal advice to the TDA in connection with matters related to the Litigation.		
DISADVANTAGES: None.		
FINANCIAL IMPACT: The fee arrangement and billing terms are shown in the Engagement Letter.		
RECOMMENDED MOTION: I move for approval of Resolution No. TDA-05, Series 2018.		
ATTACHMENTS: <ol style="list-style-type: none"> 1) Resolution 2) Engagement Letter 		

**TIMNATH DEVELOPMENT AUTHORITY
RESOLUTION NO. TDA-05, SERIES 2018**

**A RESOLUTION APPROVING THE ENGAGEMENT LETTER BETWEEN THE
TIMNATH DEVELOPMENT AUTHORITY AND BROWNSTEIN HYATT FARBER
SCHRECK, LLP FOR LEGAL SERVICES**

WHEREAS, the Board of Commissioners of the Timnath Development Authority (the “**TDA**”), pursuant to the provision of the Colorado to the provisions of the Colorado Revised Statutes, has the power to pass resolutions and enter into contracts and agreements; and

WHEREAS, the TDA has been named as an Indispensable Party in Larimer County District Court Case Number 2018CV149 entitled *Sutherland v. The City of Fort Collins; Steve Miller; and Irene Josey* (the “**Litigation**”); and

WHEREAS, attached hereto as Exhibit A is the engagement letter between the TDA and Brownstein Hyatt Farber Schreck, LLP to provide legal services and represent the TDA in the Ligation (the “**Engagement Letter**”); and

WHEREAS, the TDA is familiar with the Engagement Letter and finds it to be in the best interest of the TDA, the residents within its boundaries, and the general public to engage Brownstein Hyatt Farber Schreck, LLP as legal counsel.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TIMNATH DEVELOPMENT AUTHORITY, COLORADO AS FOLLOWS:

Section 1. Approval

The Engagement Letter is hereby approved in substantially the form as attached hereto, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Chairperson in consultation with applicable staff and consultants.

INTRODUCED, MOVED, AND ADOPTED ON MAY 8, 2018.

TIMNATH DEVELOPMENT AUTHORITY

Jill Grossman-Belisle, Chairperson

ATTEST:

Milissa Peters, Secretary

EXHIBIT A

Engagement Letter

May 1, 2018

VIA U.S. MAIL AND E-MAIL: rrogers@wbapc.com

Timnath Development Authority
c/o White Bear Ankele Tanaka & Waldron
Robert Rogers, Esq.
2154 E. Commons Ave., Suite 2000
Centennial, CO 80122

Carolynne C. White
Attorney at Law
303.223.1197 tel
303.223.0997 fax
cwhite@bhfs.com

**RE: Engagement Agreement for Legal Services – Timnath Development Authority – Sutherland
Litigation**

Dear Robert:

Thank you for selecting Brownstein Hyatt Farber Schreck, LLP (the "Firm") to serve as legal counsel to Timnath Development Authority ("TDA" or "you") in connection with matters related to litigation filed by Eric Sutherland against you and others. We are very pleased and privileged to work with you, and we appreciate the opportunity to represent you. The purpose of this engagement letter (the "Agreement") and the attached Standard Terms and Conditions which are incorporated into this letter by this reference (the "Terms") is to outline the nature and scope of the engagement and our respective responsibilities and expectations.

The Client: The Firm will represent TDA.

Scope of Engagement: This Agreement and the Terms apply to the engagement described above as well as future engagements with respect to which you ask the Firm to represent you, unless we execute a separate agreement for one or more separate engagements. Services rendered to you prior to your signing this Agreement are subject to the provisions of this Agreement and the Terms.

Staffing, Fees, Costs and Billing Arrangements: In the course of our representation, it is anticipated that I will supervise and coordinate most of the work on this matter, with the assistance of any attorneys, land use planners, paralegals, law clerks, legal assistants, and other staff working with me. My hourly rate is \$535. I can be reached directly at 303.223.1197 and via email at cwhite@bhfs.com. To best serve your interests, we may assign other attorneys affiliated with the Firm to represent you if, in our judgment, that becomes necessary or desirable. We also may assign attorneys who are independent contractors to the Firm and whose hourly billing rate will be passed on to you with a factor for the firm's overhead and profit.

Our fees are based primarily on the actual amount of time spent by our attorneys and other professionals performing services for you, including attending, conducting or making, as applicable, telephone calls, conferences, court appearances, research and investigations, traveling, and preparing letters, pleadings, briefs, agreements, and other documents. We will bill for our services at our applicable hourly billing rates in effect at the time we render the services, which are available upon request. In the course of providing services to you, it may be necessary for us to incur certain costs. You agree to reimburse us in accordance with the Terms for all reasonable costs that we actually incur and for the Firm's administrative fee. For more information on billing, including third party and other costs for which you will be billed, rate changes and other factors affecting fees and other charges, please refer to the Terms.

410 Seventeenth Street, Suite 2200
Denver, CO 80202-4432
main 303.223.1100

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Billing Period and Payments: We will bill you on a monthly basis or such other periodic basis as we may determine. Except as otherwise set forth herein, you agree to make payment of all outstanding fees and costs within 30 days of your receipt of a billing statement. We reserve the right to charge interest on overdue amounts at the rate of 1.5% per month, or the maximum interest rate permitted by law, whichever is less, from the date due until paid. You agree to pay such interest on the outstanding balance in addition to the balance of fees and expenses due.

Retainer Deposit: Given your relationship with the Firm, we agree to waive an upfront deposit for this matter, and you agree to pay our bills timely pursuant to the Terms. We reserve the right to require a deposit in the future if we feel that circumstances warrant it, and in such event you agree to post such a deposit.

Conflicts of Interest: We have conducted a search in our conflicts database of your name and the names of your owners, principals and affiliates and all adverse parties and their owners, principals and affiliates that you provided to us, as applicable. Based on the information provided, we have discovered no conflicts. To help us continue to assess conflicts, however, we will depend on you to keep us advised of changes in TDA's owners, principals, affiliates and potential adverse parties that might affect our analysis of actual or potential conflict of interests.

Complete Agreement: This Agreement and the Terms contain all the terms and provisions of and related to our engagement. This Agreement and the Terms may only be amended in a writing signed by a representative of the Firm and you.

If you agree with the terms and provisions of this Agreement and the Terms, please countersign this letter where indicated below and return it to us at your earliest opportunity. If you have any questions, please feel free to contact me or a member of our team.

Sincerely,

BROWNSTEIN HYATT FARBER SCHRECK, LLP



By:

Carolynne C. White

Acceptance of Agreement and Standard Terms and Conditions:

I have read and understand this Agreement and the attached Standard Terms and Conditions. I am authorized to, and do hereby, engage Brownstein Hyatt Farber Schreck, LLP in accordance with the terms of this Agreement and the attached Standard Terms and Conditions, effective as of the date of this Agreement.

BROWNSTEIN HYATT FARBER SCHRECK, LLP STANDARD TERMS AND CONDITIONS

Duties of the Parties: Brownstein Hyatt Farber Schreck, LLP (the "Firm") agrees to represent you in accordance with the accompanying Engagement Agreement for Legal Services (the "Agreement") and these Standard Terms and Conditions (the "Terms"). You agree to fully cooperate with us, be open and truthful, provide us with complete information pertaining to the representation, keep us informed of developments, promptly respond to our inquiries and communications, and pay our bills in a timely manner.

Fees: We record time in 6-minute increments unless other arrangements are made, and our billing statements will be based on time recorded in those increments. You agree to pay our fees based on time expended on your behalf, computed on an hourly basis at our then applicable rates for this engagement for the applicable attorneys and staff assigned to the matter. Generally speaking, these hourly rates currently are, with limited exceptions, as follows:

Shareholders:	From \$365 to \$1195 per hour
Counsel:	From \$350 to \$1195 per hour
Associates:	From \$270 to \$490 per hour
Lit Support Analysts:	From \$245 to \$365 per hour
Land Use Planners:	From \$225 to \$450 per hour
Paralegals:	From \$160 to \$340 per hour
Law Clerks:	From \$180 to \$270 per hour
Legal Assistants:	From \$95 to \$250 per hour

We change our rates, as well as our other standard charges, from time to time (typically on January 1 of a calendar year), to reflect competitive or market conditions, inflation, changes in attorney seniority or status, changes to our rates generally, changes in the nature or scope of the services performed and other factors. Unless otherwise agreed to in writing, you agree that any new rates or charges apply prospectively to all matters then being handled by the Firm for you. You agree to pay all fees billed at the then-current rates. Individual rate changes will be reflected in the first billing statement that includes the new rates and will be evident from the information you receive with each bill.

Outside Contract Attorneys and Legal Assistants: You agree that we may utilize contract attorneys and legal assistants who are supervised by our attorneys but not employed by the Firm, and who may reside inside or outside of the United States. Contract attorneys typically will be billed at the rates of the attorneys at the firm who provide a comparable, applicable level of service, if not otherwise agreed to in writing.

In-House Costs and External Expenses: In addition to fees incurred for legal work, your statement will include other charges and costs, some of which are summarized below, that you agree to pay.

Charges for long distance telephone calls, in-office copying, ordinary postage, and deliveries made by in-house staff are covered by an administrative fee, currently calculated at 2.5% of fees incurred. This administrative fee is charged in lieu of itemizing those costs.

Other costs which you agree to pay include, but are not limited to: computer-assisted legal research; third party vendor fees (including document copying, transcript production, depositions, e-discovery file processing, and trial preparation materials); messenger and other delivery fees; the cost of

licensing and installing special computer applications used to manage your case; secretarial overtime (when required by the urgency of your matter); extraordinary administrative, technical or accounting support; professional mediator, arbitrator, and/or special master fees; other vendor costs; and reasonable expenses for travel, meals and hotel accommodations.

For Litigation matters that involve e-Discovery tasks of processing and reviewing electronic data requiring the Firm to host data in excess of 5 gigabytes ("GB"), we will bill you \$10 per hosted GB per month, which may be more than the Firm's direct cost to account for overhead and related expenses. These hosting charges may continue to be billed for as long as we continue to host the data in an active server environment.

We may select experts, consultants and investigators who in our judgment are necessary to aid in the preparation of your matter. We will inform you of the persons selected and their charges. You authorize us to incur all reasonable costs and to hire such experts, consultants and investigators, and you agree to pay these expenses.

At our discretion, all costs may be included on your statement or billed directly to you. We may also require that you advance to us the estimated amount for such items prior to our incurring them on your behalf. You agree to pay such costs, and we assume no obligation to advance any costs on your behalf or to pay vendors, experts, consultants or other third parties we engage on your behalf.

Estimates Not Binding: It is often impractical to determine in advance the amount of time and effort that will be needed to complete all the necessary work on a matter or the total amount of fees, charges, and costs that may be incurred. Additionally, if any estimates or budgets are provided, they may need to be adjusted upward or downward in response to changing circumstances. Accordingly, unless otherwise expressly agreed in writing, our estimates and budgets are not intended to be binding, are subject to unforeseen or unanticipated circumstances, and do not limit or "cap" our fees and other charges or costs.

No Guarantees: Comments or expressions of opinion about the potential outcome of your matter or any phase thereof are expressions of opinion only. We cannot guarantee the outcome or make any promises in that regard. Unless otherwise specifically agreed in writing, our fees are not contingent upon the outcome or completion of a matter.

Billing Disputes: You agree to inform us of any dispute you may have with respect to a billing statement within ten (10) days of the statement date. Even if you dispute a portion of a billing statement, you agree to pay the undisputed portion within 30 days of your receipt of the statement. You will be responsible for any costs of collection incurred by the Firm, including reasonable attorneys' and paralegals' fees and costs.

Retainer Deposits: You agree to pay advance fee deposits in accordance with the provisions of the Agreement and the Terms. In addition, for matters involving litigation, arbitration, or adjudication of disputes in other tribunals, we reserve the right to request from you an additional deposit before trial or hearing in an amount reflective of the anticipated fees and costs of that proceeding. You agree to timely provide such a deposit. If you do not provide this deposit, we shall have the right to withdraw

from this representation, consistent with our obligations under applicable law and the rules of professional conduct, and you agree not to oppose our withdrawal.

Responses to Auditors' Inquiries: We are frequently asked to provide information to third-party auditing firms regarding legal matters of our clients. We respond to those inquiries with the same level of care that we use to handle our clients' other legal work, and we will charge for these services at the hourly rates applicable to your engagement. When an auditing firm requests information on your behalf, that request will be deemed to be your consent for us to disclose the requested information to that auditing firm and to bill for those services.

Permission to List the Company as a Client: Occasionally, we may provide lists of representative clients or matters to legal or other publications and may use our clients' names or a description of their matters in marketing materials. Unless you instruct otherwise, you agree that such use is acceptable.

Communications and Special Requirements: During the course of our engagement, we may exchange emails and electronic versions of documents with you using commercially available software. Such communications are occasionally victimized by the creation and dissemination of viruses and other destructive electronic programs and hackers who compromise the privacy of electronic communications. Our virus scanning software may also occasionally reject a communication that you send to us, or we may send you a message that is rejected by your system. Although infrequent, these occurrences are to be expected as part of the ordinary course of business. Accordingly, we cannot guarantee that our communications and documents will always be virus-free or immune from invasions of expected privacy. If for these or other reasons you would prefer or require that we not use electronic communications or that we follow special instructions or encrypt emails or other communications, you should promptly advise in writing those working on your matters of such preferences or requirements.

Ownership of Records and Files: You understand and agree that your client file consists of any correspondence, legal memoranda, pleadings, agreements, or other documents that the Firm retains in its electronic document management system, which is duplicated in hard copy. It is our policy to destroy all client files (including all documents and materials therein) no less than eight years following completion of each matter. This file destruction procedure is automatic, and you will not receive further notice prior to the destruction of these files. Accordingly, we advise you to maintain your own files relating to the matters which we are handling. Alternatively, you may request, prior to our scheduled destruction date, that we deliver all or certain portions of these client files to you rather than destroying them.

Termination: You may terminate our services at any time. If you choose to do so, you agree to give us prompt notice of the termination. Upon such termination, you will remain obligated to pay for all services rendered and costs paid or incurred on your behalf before the termination or which are reasonably necessary thereafter. If we are attorneys of record in any proceeding, you agree to promptly execute and return to us appropriate documents effecting our substitution or withdrawal. We will promptly return to you any remaining balance of your retainer as well as a copy of your client file, as described above.

Except to the extent limited by applicable law or rules of professional conduct, we may also withdraw from this representation at any time. We may withdraw, by way of example, if:

- You fail to fulfill an obligation to the Firm or to honor the terms of the Agreement or these Terms, such as by failing to pay our statements or to post deposits in a timely manner;
- You make it unreasonably difficult to represent you;
- Our continued representation of you will result in an unreasonable financial burden on the Firm; or
- Facts or circumstances arise that, in our view, render our continuing representation unlawful or unethical.

If we elect to withdraw, you agree to take all steps reasonably necessary to free us of any obligation to perform further services. Notwithstanding such withdrawal, you will remain obligated to pay us for all services provided and to reimburse us for all costs paid or incurred on your behalf before the termination or which are reasonably necessary thereafter.

Our representation of you will be considered terminated at the earliest of your termination of our representation, our withdrawal from our representation of you, or the substantial completion of our work for you (as may be evidenced by a final bill, by a substantial period of inactivity, or otherwise).

Disputes: All disputes arising out of or relating to the Agreement and these Terms shall be resolved in a binding arbitration administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The arbitration will take place in, and be administered in accordance with the laws of, the state in which the legal services provided by the Firm were primarily performed. The arbitrator shall award the substantially prevailing party its reasonable attorney fees and costs, and judgment on the award may be entered by a court of competent jurisdiction.

Interpretation and Effective Date: The Agreement and these Terms supersede all other prior and contemporaneous written and oral agreements and understanding between us, including any outside counsel guidelines or service level agreements, or the like, that you adopt, unless such outside counsel guidelines or service level agreements have been provided to us prior to the date of the Agreement or unless the Agreement and these Terms have been made expressly subject thereto. You acknowledge that no promises have been made to you by us other than those in the Agreement and these Terms. In the event that these Terms conflict with the Agreement, the Agreement will govern. If any provision of these Terms or the Agreement is found unenforceable, the remaining provisions will remain in effect. If the Agreement does not take effect for any reason, you will still be required to pay us the reasonable value of any services we performed for you and all costs actually and reasonably incurred on your behalf.

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