1. CALL TO ORDER AND ROLL CALL

2. AMENDMENTS TO THE AGENDA

3. PUBLIC COMMENT

4. CONSENT AGENDA
   4.a. Approval of the May 14, 2019, Town Council Meeting Minutes
       Timnath Town Council - 14 May 2019 - Minutes
   4.b. May 28, 2019 Check Register
       May 28, 2019 Check Register
   4.c. ORDINANCE NO. 7, SERIES 2019, An Ordinance Approving the
       Addition of Chapter 16, Article 12 to the Timnath Land Use Code
       Regarding Oil and Gas Drilling and Production (the “Interim Town
       Regulations”). - Setting a public hearing on July 9, 2019, at 6:00 p.m.
       Staff Report - Pdf
       Ordinance No. 7, Series 2019 - Land Use Code Amendment Oil and
       Gas, 2019-05-13

5. REPORTS
   5.a. Mayor and Council Reports

6. BUSINESS
   6.a. RESOLUTION NO. 29, SERIES 2019, A Resolution Approving the
       Construction of the Rendezvous Access Road
       Staff Report - Pdf
       Resolution 29 Access Road - Town Resolution
       Location of Access Road
       Purchase Authorization Signed
       Connell Short Form Construction Agreement
       Presented by: Matt Taranto
   6.b. RESOLUTION NO. 30, SERIES 2019, A Resolution Approving the
       Construction of the Old Town Temporary Interim Parking
       Staff Report - Pdf
       Resolution 30
       Contractor Agreement
       Connell Cost Estimate
       Executed Purchase Authorization
       Presented by: Matt Blakely
6.c. RESOLUTION NO. 31, SERIES 2019, A Resolution Approving The Fisher Subdivision Preliminary Plat

Staff Report - Pdf
Resolution 31
Preliminary Plat
Landscape Plan
Narrative
Approved Sketch Plan for Reference
Presented by: Kevin Koelbel

7. ADJOURNMENT

DISCLAIMER

ADA Disclaimer: The Town of Timnath will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. If you need reasonable accommodation please notify us 24 hours in advance of the service, program or activity. Please call 970-224-3211 (TTY: Dial 711 or 800-659-3656 for Relay Colorado assistance).
1  CALL TO ORDER AND ROLL CALL       6:00 P.M.

2  AMENDMENTS TO THE AGENDA

3  PUBLIC COMMENT

4  CONSENT AGENDA
   a) Approval of the April 22, 2019, Special Town Council Meeting Minutes
   b) May 14, 2019 Check Register

   Bill Neal made a motion to approve the consent agenda. Aaron Pearson seconded the motion. CARRIED unanimously.

5  REPORTS
   a) Mayor and Council Reports
      • Ms. Getchius spoke about the success of Clean-up Day, the 100th Anniversary of Timnath Elementary, the Police Safety Fair and the JJ District ribbon cutting.
      • Mayor Grossman Belisle spoke about the Town Center open house on June 25th.
      • Councilmember Neal expressed his thanks to Sgt. Wynkoop for his work on a local case.

   b) Finance Update Report for April 23, 2019 Meeting
      Included in the packet.
c) Engineering & Public Works Report
   Included in the packet.

d) Community Development Report
   Included in the packet.

e) Timnath Police Department Staff Report
   Included in the packet.

f) Town Manager’s Report
   Included in the packet.

6 BUSINESS

a) RESOLUTION NO. 27, SERIES 2019, A Resolution Adopting the Public Meeting Rules of Conduct
   - Mr. Rogers spoke about the proposed resolution.
   - Mayor Grossman-Belisle stated that it would be helpful to have the rules posted at the new building.

Bill Neal made a motion to approve RESOLUTION NO. 27, SERIES 2019, A Resolution Adopting the Public Meeting Rules of Conduct. Lisa Laake seconded the motion. CARRIED unanimously.

b) RESOLUTION NO. 28, SERIES 2019, A Resolution Approving the Professional Services Agreement between the Town of Timnath and ALM2S
   - Mr. Williamson spoke to Council about the proposed resolution.

Lisa Laake made a motion to approve RESOLUTION NO. 28, SERIES 2019, A Resolution Approving the Professional Services Agreement between the Town of Timnath and ALM2S. Bill Neal seconded the motion. CARRIED unanimously.

7 ADJOURNMENT 6:06 P.M.

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Mayor

__________________________________________
Town Clerk
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## Town of Timnath Payment Approval Report - Check Register

**Report dates:** 3/1/2019-5/31/2019  
**May 20, 2019 09:36AM**

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**Xcel Energy**

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Dated: ____________________________

Mayor: ____________________________

City Council: ____________________________

City Recorder: ____________________________
DESCRIPTION
An Ordinance Approving the Addition of Chapter 16, Article 12 to the Timnath Land Use Code Regarding Oil and Gas Drilling and Production (the “Interim Town Regulations”).

SUMMARY
In order to provide additional protections for the Town’s residents given the potential for oil and gas drilling permits in advance of anticipated changes to statewide oil and gas regulations, Town Staff is proposing the Interim Town Regulations to govern oil and gas activity within Town limits during the period leading up to the anticipated statewide regulatory changes. The Interim Town Regulations are structured very stringently, and they are specifically based on recent amendments to the Oil and Gas Conservation Act. In late April, through Senate Bill 181 (“Senate Bill 181”), the Colorado General Assembly ordered the Colorado Oil and Gas Conservation Commission (the “COGCC”) to promulgate an expansive set of new regulatory rules (the “Senate Bill 181 Rules”), which are expected to be adopted in phases in calendar years 2019 and 2020. The Interim Town Regulations would take effect immediately after second reading of the Ordinance on July 9, 2019, and would apply until anticipated Senate Bill 181 Rules are adopted and can be analyzed, and additional regulations can be considered by the Town Council. Staff is closely watching the COGCC’s rule-making agenda as well as other local government responses to Senate Bill 181. In furtherance of these efforts, staff representatives from the Town and other neighboring jurisdictions will be participating in a task force that is being formed by Larimer County to help develop its regulations. This Council will be briefed on all of these processes as they develop. In the meantime, the Interim Town Regulations are necessary because increasing oil and...
gas market rates could result in permit applications within the Town limits before the anticipated Senate Bill 181 Rules are adopted by the COGCC.

RECOMMENDATION
Staff recommends approval of this Ordinance.

KEY POINTS
- The Interim Town Regulations are intended to function as a stop-gap measure until the Senate Bill 181 Rules are adopted by the COGCC, at which point the Town Council will have the opportunity to consider whether additional municipal regulations are appropriate in conjunction with the Senate Bill 181 rules. In the meantime, the Interim Town Regulations are as stringent as any imposed by the COGCC, and in some cases are more stringent.
- All applicants would be required to comply with the Interim Town Regulations as presented in Article 12 of the Town’s Land Use Code. Additionally all applicants would be required to enter into a memorandum of understanding with the Town that would address project-specific items, such as access roads, fencing aesthetics, and other issues that are not preempted by state law. Specifically, the memorandum of understanding is the agreement that allows the Town to impose additional terms on the operator that are above and beyond what is required by the COGCC.
- Several definitions have been changed to match the definitions in the current COGCC Rules.
- The Town may impose an inspection fee to inspect and monitor for road damage and compliance with local fire codes, land use permit conditions, and the Town building code all consisted with § 34-60-106(15), C.R.S.
- Each applicant for a Conditional Use Permit is required to pay a $1,000 application fee.
- All Production Facilities and Well Sites shall be located at least 500 feet from a Residential Building Unit and at least 1,000 feet from a High Occupancy Building Unit (such as a nursing facility or child care center.) These setback requirements are at least as stringent as the setback requirements within the COGCC Rules.

ADVANTAGES
- The Ordinance provides greater protection to the Town’s residents than currently exists.
- The Ordinance will bring the Town’s oil and gas regulations in line with recent changes to the Act and the COGCC Rules.
- This Ordinance requires the enforcement of all statewide regulations promulgated by the COGCC, and also confers added authority on the Town to enforce additional regulations that are not required by the COGCC.
DISADVANTAGES
None.

FINANCIAL IMPLICATIONS
At this time, there are no active oil and gas sites or permit applications within the Town. Accordingly, the financial impact of the revised regulations is not expected to be significant.

RECOMMENDED MOTION
I move for approval of the Ordinance.

ATTACHMENTS
1. Ordinance
TOWN OF TIMNATH, COLORADO
ORDINANCE NO. 7, SERIES 2019

AN ORDINANCE APPROVING THE ADDITION OF ARTICLE 12 TO THE TIMNATH LAND USE CODE REGARDING OIL AND GAS DRILLING AND PRODUCTION

WHEREAS, The Town of Timnath (the "Town") is a home rule municipality operating under the Timnath Home Rule Charter (the “Charter”) and the Town’s Municipal Code (the “Code”). Pursuant to the Charter, the Code and the authority given home rule municipalities, the Town may adopt and amend ordinances; and

WHEREAS, Town has adopted the Timnath Land Use Code (the “Land Use Code”) to create a vital, cohesive, well-designed community in order to enhance the Town’s character and further the citizens’ goals as identified in the Town of Timnath Comprehensive Plan; and

WHEREAS, the Town has previously adopted Oil and Gas Drilling and Production regulations establishing requirements for oil and gas development within the Town; and

WHEREAS, in response to an increase in oil and gas development throughout the State of Colorado the Colorado General Assembly has amended the Oil and Gas Conservation Act (the “Act”) and the Oil and Gas Conservation Commission (the “COGCC”) has promulgated new rules (the “COGCC Rules”) since the Town adopted Oil and Gas Drilling and Production regulations; and

WHEREAS, the Town Council desires to revise the Land Use Code to enact new Oil and Gas Drilling and Production regulations in harmony with the Act and the COGCC Rules that will allow the responsible development of oil and gas resources within the Town, consistent with and subject to, the protection of the public health, safety, and welfare of its residents and the environment; and

WHEREAS, the Town Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the preservation of public health, welfare, peace, safety and property and that this Ordinance is necessary for the protection of public convenience and welfare.

NOW, THEREFORE, THE COUNCIL OF THE TOWN OF TIMNATH, COLORADO, ORDAINS:

ARTICLE 1 –
The Town Council hereby approves the addition of Article 12 to the Town Land Use Code as shown in Exhibit A attached hereto, subject to administrative, technical, or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Town’s consultants and staff.

ARTICLE 2 – SEVERABILITY
If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision,
or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

ARTICLE 3 – EFFECTIVE DATE
This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING, ON MAY 28, 2019, AND SET FOR PUBLIC HEARING AND SECOND READING AT 6:00 P.M. ON JULY 9, 2019, AT THE TIMNATH ADMINISTRATION BUILDING, 4800 GOODMAN STREET, TIMNATH COLORADO AND ORDERED PUBLISHED BY TITLE THIS 28TH DAY OF MAY 2019.

MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON JULY 9, 2019.

TOWN OF TIMNATH, COLORADO

______________________________
Jill Grossman-Belisle, Mayor

ATTEST:

______________________________
Milissa Peters-Garcia, CMC
Town Clerk
ARTICLE 12 – OIL AND GAS DRILLING AND PRODUCTION

12.1 Purpose

The intent of these regulations is to manage the development of oil and gas resources within the Town, while mitigating potential land use conflicts between such development and existing, as well as planned, land uses. Under Colorado law, the surface and mineral estates are separate and distinct interests in land and one may be severed from the other. Owners of subsurface mineral interests have certain legal rights and privileges, including the right to use that part of the surface estate reasonably required to extract and develop their subsurface mineral interests, subject to compliance with the provisions of these regulations and any applicable statutory and regulatory requirements. Municipal governments have a recognized, traditional authority and responsibility to regulate land use within their jurisdiction. These regulations are intended as an exercise of this land use authority.

12.2 Definitions

All terms used in this Article that are defined in the Act or in Commission regulations and are not otherwise defined in this section, are defined as provided in the Act or in such regulations as of the effective date of this Article. All other words used in this Article are given their usual customary and accepted meaning and all words of a technical nature, or peculiar to the oil and gas industry, shall be given that meaning which is generally accepted in said oil and gas industry. When not clearly otherwise indicated by the context, the following words and phrases used in this Article have the following meanings:

**Act:** means the Oil and Gas Conservation Act of the State, as may be amended from time to time.

**Applicant:** means any person applying for a Conditional Use Permit from the Town in accordance with this Article.

**Building Unit:** means a Residential Building Unit; and every five thousand (5,000) square feet of building floor area in commercial facilities or every fifteen thousand (15,000) square feet of building floor area in warehouses that are operating and normally occupied during working hours.

**Commission or COGCC:** means the Colorado Oil and Gas Conservation Commission.

**Conditional Use Permit:** means a conditional use permit granted by the Town in accordance with this Article.

**County:** means Larimer or Weld County, Colorado whichever the case may be.

**Day:** means a calendar day.
**Dedicated Injection Well:** means any Class II wells used for the exclusive purpose of injection fluids or gas from the surface for enhanced oil recovery or the disposal of E&P wastes. A gas storage well is not a dedicated injection well.

**Director:** means the Director of the Oil and Gas Conservation Commission of the State of Colorado or any member of the Director’s staff authorized to represent the Director.

**EPA:** means the Environmental Protection Agency.

**High Occupancy Building Unit:** means (a) any operating Public School as defined in §22-7-703(4), C.R.S. Nonpublic School as defined in § 22-30.5-103.6(6.5), C.R.S., Nursing Facility as defined in § 25.5-4-103(14), C.R.S., Hospital, Life Care Institutions as defined in § 12-13-101, C.R.S., or Correctional Facility as defined in § 17-1-102(1.7), C.R.S., provided the facility or institution regularly serves 50 or more persons; or (b) an operating Child Care Center as defined in § 26-6-102(1.5). C.R.S.

**Inspector:** means any person designated by the Town, or by the Town’s designee, who shall have the authority to inspect Well Sites to determine compliance with this Article and other applicable ordinances of the Town.

**Oil Well:** means a well, the principal production of which at the mouth of the well is oil, as defined by the Act.

**Operating Plan:** means a general description of a Well Site or a Production Site identifying purpose, use, typical staffing, seasonal or periodic considerations, routine hours of operating, source of services/infrastructure, travel routes of trucks and frequency of trips to the site, and any other information related to regular functioning of that facility.

**Operator:** means any person who exercises the right to control the conduct of oil and gas operations.

**Owner:** means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas produced therefrom either for such owner or other or for such owner and others, including owners of a well capable of producing oil or gas, or both.

**Production Site:** means the area surrounding proposed or existing production pits or other accessory equipment required for oil and gas production, at which may also be located tanks and tank batteries, exclusive of transmission and gathering pipelines.

**Reentering:** means accessing an existing well bore for either the original or amended purpose, provided that such well has not been abandoned.

**Residential Building Unit:** means a building or structure designed for use as a place of residency by a person, a family, or families. The terms includes manufactured, mobile, and modular homes, except to the extent that any such manufactured, mobile, or modular home is intended for temporary occupancy or for business purposes.

**State:** means the State of Colorado.
Surface Use Agreement: shall mean any agreement in the nature of a contract or other form of document binding on the Operator, including any lease, damage agreement, waiver, local government approval or permit, or other form of agreement, which governs the operator’s activities on the surface in relation to locating a Well, Well Site, pipeline or any other Oil and Gas Facility that supports oil and gas development located on the Owner’s property.

Town: means the Town of Timnath, Colorado.

Town Code: means the Town’s Municipal Code as may be amended from time to time.

Twinning: means the drilling of a well within a radius of fifty feet from an existing well bore when the well cannot be drilled to the objective depth or produced because of an engineering problem, such as a collapsed casing or formation damage.

Well: means an oil or gas well, and Oil Well, a hole drilled for the purpose of producing oil or gas, a well into which fluids are injected, a stratigraphic well, a gas storage well, or a well used for the purpose of monitoring or observing a reservoir.

Wellhead: means the equipment attaching the surface equipment to the wellbore equipment at the Well.

Well Site: means the areas that are directly disturbed during the drilling and subsequent operation of, or affected by production facilities directly associated with, any oil well, gas well, or Dedicated Injection Well and its associated well pad.

12.3 Requirements and Procedures

1. Proposed New Wells, Redrilling Certain Wells and Other Specific Enhancements. It shall be unlawful for any person to drill a well that has not been previously permitted under this Article, change the purpose of the Well (i.e. from a vertical well, to directional, or horizontal, or vice a versa), reactivate a plugged or abandoned Well, or perform initial installation of accessory equipment or pumping systems (in cases where a well is not being drilled) unless a Conditional Use Permit has first been granted by the Town in accordance with the procedures defined in this Article.

   a. The granting of such Conditional Use Permit shall not relieve the Operator from otherwise complying with all applicable regulatory requirements of the Act, the Town, the State, and the United States.

   b. When a Conditional Use Permit has been granted for a Well, reentry of such Well for purposes of Sidetracking, Twinning, deepening, recompleting or reworking shall not require a separate Conditional Use Permit.

   c. The Conditional Use Permit shall be limited to the current proposed facilities as shown in the approved site plan. To the extent the Applicant desires, after initial completion of a well, to place additional equipment on a tank battery or Wellhead location which was not shown in the approved site plan, the Applicant must, except in a situation where additional equipment is necessary
for a period of fourteen (14) days or less, notify the Town of installation of such additional equipment and update the site plan to reflect the changed conditions.

2. Within thirty (30) days after completion of operations, the Applicant shall provide to the Town “as-built” drawings showing all facilities, pipelines, flow lines and gathering lines which the Applicant has installed subject to the Conditional Use Permit.

3. Inspections. In recognition of the potential impacts associated with oil and gas drilling and well operation in an urban setting, all wells and accessory equipment and structures may be inspected by an Inspector at reasonable times to determine compliance with applicable provisions of this Article, and all other applicable Town, County, or State health or safety standards. For the purpose of implementing and enforcing the provisions of this Article, Town personnel so designated have the right to enter upon private property after reasonable notification to the Operator.

4. Inspection Fee. The Town may impose inspection fees for inspection and monitoring for road damage and compliance with local fire codes, land use permit conditions, and the Town building code.

5. Taxation. All Operators must conform to applicable provisions of this Article and the Town Code relating to taxation.

6. Application Fee. A nonrefundable fee of one thousand dollars ($1,000) shall accompany the application for any Conditional Use Permit.

7. Fee Agreement. The Applicant and the Town shall enter into an “Agreement for Payment of Land Use Application Review Expenses Incurred by the Town” or a similar agreement prior to the issuance of a Conditional Use Permit.

12.4 Application Elements

1. An application for a Conditional Use Permit pursuant to this Article shall be filed with the Community Development Director and shall include the following information:

   a. Site Plan. The site plans for a Well Site or Production Site submitted with a Conditional Use Permit application shall be submitted on one or more plats or maps, at a scale not less than one inch to fifty feet, showing the following information:

      i. The proposed location of Production Site facilities or Well Site facilities associated with the Well in the event production is established, if applicable. Future development of the oil and gas resources shall be considered in the location of the tank battery. Existing tank batteries and transmission and gathering lines within one thousand (1,000) feet of the Well Site or Production Site shall be shown.

      ii. The location of layout including, without limitation, the position of the
drilling equipment and related facilities and structures, if applicable.

iii. True north arrow.

iv. Existing improvements, if any, within a radius of one thousand (1,000) feet of the proposed Well.

v. Existing utility easements and other rights-of-way of record, if any, within a radius of one thousand (1,000) feet of the proposed Well.

vi. Existing irrigation or drainage ditches within five hundred (500) feet of the Well Site or Production Site, if any.

vii. The Applicant’s drainage and erosion control plans for the Well Site or Production Site and the area immediately adjacent to such site, if applicable.

viii. Location of access roads.

ix. The boundaries of the Well Site or Production Site and existing lease boundaries.

x. The parcel lines and names of abutting subdivisions or the names of owners of abutting, unplatted property within one thousand (1,000) feet of the Well Site or Production Site.

xi. The name and address of the Operator and the name of the person preparing the site plan or map.

xii. The landscaping and visual abatement plans for the Well Site and/or Production Site including a visual depiction of the proposed privacy fence.


b. Vicinity Maps. The vicinity maps for a Well Site or Production Site submitted with a Conditional Use Permit application shall be to scale and submitted on one or more plats or maps showing the following information within ½ mile of the proposed improvements:

i. Location of all existing waterbodies and watercourses, including direction of water flow. This information shall be submitted on USGS 7.5 minute series or assessor base maps which indicate topographic detail and show all existing waterbodies and watercourses with a physically defined channel.

ii. Location of existing Oil Wells as reflected in COGCC records. This information shall be submitted on a map and shall include any and all Wells.

iii. Location of drill site. The information to be submitted shall be Commission Form 2 or as may be modified from time to time and shall include the Parcel
Tax Identification Number.

c. Narrative. In addition to the site plans and the vicinity maps required in this subsection 12.4, the application shall include the following:

i. The Operator's and surface owner's names and addresses, copies of any required COGCC forms and designation of agent, if applicable.

ii. An Operating Plan

iii. A list of all permits or approvals obtained or yet to be obtained from local, State or federal agencies other than COGCC.

iv. An emergency response plan that is mutually acceptable to the Operator and the appropriate fire district(s), sheriff’s office, local law enforcement, and other emergency responders that includes a list of local telephone numbers of public and private entities and individuals to be notified in the event of an emergency, the location of the Well, and provisions for access by emergency response entities.

v. A plan for weed control at the Well Site or Production Site.

vi. A fire protection plan that is mutually acceptable to the Operator and the appropriate fire district(s) that includes planned actions for possible emergency events and any other pertinent information. Prior to application to the Town, a proposed fire protection plan and emergency response plan shall be submitted to and reviewed by the fire district.

vii. Sanitary facilities that comply with Rule 602 of the COGCC Rules and Regulations.

d. Memorandum of Understanding. The Applicant and the Town shall enter into a Memorandum of Understanding to be negotiated simultaneous with the issuance of a Conditional Use Permit.


   a. Application Procedures per Section 2.9.3 of this code shall apply.

   b. Notice Provisions per Section 2.9.4 of this code shall apply.

   c. Public Hearings per Section 2.9.5 of this code shall apply.

12.5 Notice to Proceed

1. Prior to commencement of operations for which Conditional Use Permit has been approved, a “Notice to Proceed” shall be obtained from the Community Development Director. The Community Development Director shall issue the “Notice to Proceed” upon
receipt of the following:

a. A copy of the resolution approving the Conditional Use Permit for a Well.

b. A copy of the approved site plan.

c. A copy of an approved extra legal vehicle or load permit issued by the Town Engineer pursuant to this Code, if applicable.

d. Copies of any necessary State or federal permits issued for the operation, if not previously submitted.

e. Fully executed Memorandum of Understanding.

12.6 Building Permit

A Town of Timnath Building Permit must be obtained for all aboveground structures to which the Town Code applies.

12.7 Oil and Gas Operations Buffering

1. Oil and Gas Operations Buffer Yard Standards. The following requirements shall apply to Production Site and Well Site:

   a. Measured. The buffer yard shall be measured as either the distance from the outer edge of an Production Site or Well Site to the nearest wall or corner of any Residential Building Unit or High Occupancy Building Unit or, if any Colorado Oil and Gas Conservation Commission adopted setback measurement method applicable to a Residential Building Unit or High Occupancy Building Unit results in a greater distance between the Production Site or Well Site and the Residential Building Unit or High Occupancy Building Unit at issue, then the Colorado Oil and Gas Conservation Commission setback measurement method shall be used.

   b. Minimum Buffer Distances. The following minimum buffer distances shall apply:

      i. Residential Building Unit. The minimum buffer between a Residential Building Unit and any Production Site or Well Site shall be five hundred (500) feet, or the Colorado Oil and Gas Conservation Commission designated setback distance, whichever is greater.

      ii. High Occupancy Building Units. The minimum buffer between a High Occupancy Building Unit and any Production Site or Well Site shall be one thousand (1,000) feet, or the Colorado Oil and Gas Conservation Commission designated setback distance, whichever is greater.

      iii. The minimum buffer between public playgrounds, parks, recreational fields, or community gathering spaces and any oil and gas location shall be one thousand (1,000) feet, or the Colorado Oil and Gas Conservation
Commission designated setback distance, whichever is greater.

**Buffer Yard Requirements**

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<td>525 feet</td>
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<td>7 Ornamental Trees or Type 2 Shrubs ***</td>
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<td>0.75</td>
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<tr>
<td></td>
<td>650 feet</td>
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* “Base standard” for each type of buffer yard is that width which has a plant multiplier.

** “Plant multipliers” are used to increase or decrease the amount of required plants based on providing a buffer yard of reduced or greater width or by the addition of a wall, berm or fence.

*** Shrub types: Type 1: 4’ -8’ High Type 2: Over 8’ High

**Alternative compliance buffer reduction from plugged and abandoned wells.** Upon Applicant request, the decision maker may approve a reduced buffer distance from a plugged and abandoned well for which reclamation has been completed, all of the aforementioned in accordance with Colorado Oil and Gas Conservation Commission regulations, in lieu of the minimum buffer distances set forth in the immediately preceding Subsection (b), provided that the approved reduced buffer is no less than 150 feet from the permanently abandoned Well and meets the requirements specified below.

i. **Procedure.** To request alternative compliance, an alternative compliance buffer reduction plan shall be prepared and submitted in accordance with the submittal requirements established by the Director. At a minimum, the plan must:

a. Clearly identify and discuss the proposed buffer reduction and the ways in which the plan will equally well or better eliminate or minimize the nuisances and reduce the adverse effects referenced in the purpose of this Article than would a plan which complies with the separation and spacing standards of this Article.

b. Include information regarding environmental testing and
monitoring for the Well Site. Site investigation, sampling, and monitoring shall be conducted to demonstrate that the Well has been properly abandoned and that soil, air and water quality have not been adversely impacted by oil and gas operations or facilities or other sources of contamination. Such sampling and monitoring shall be conducted by a qualified environmental engineering or consulting firm with experience in oil and gas investigations. Director approval that the sampling and monitoring plan contains the information required pursuant to this Article is required prior to sampling occurring and such plan shall include, but is not limited to, the following:

i. Site survey, historical research, and/or physical locating techniques to determine exact location and extent of oil and gas operations and facilities.

ii. Documentation of plugging activities, abandonment and any subsequent inspections.

iii. Soil sampling, including soil gas testing.

iv. Groundwater sampling.

v. Installation of permanent groundwater wells for future site investigations.

vi. A minimum of five (5) years of annual soil gas and groundwater monitoring at the well location.

c. Upon completion of the site investigation and sampling, not including the ongoing monitoring, the consultant must provide a written report verifying that the soil and groundwater samples meet applicable EPA and State residential regulations and that a reduced buffer would not pose a greater health or safety risk for future residents or users of the site. Otherwise, the decision maker may specify an appropriate buffer distance or require that the following actions be completed by a qualified professional before development may occur, including but not limited to:

i. Remediation of environmental contamination to background levels.

ii. Well repair or re-plugging of a previously abandoned well.

ii. Review Criteria. To approve an alternative compliance buffer reduction
plan, the decision maker must first find that the proposed alternative plan eliminates or minimizes the nuisances and reduces the adverse effects referenced in the purpose of this Section equally well or better than would a plan which complies with the separation and spacing standards of this Section.

iii. Disclosure. If any Residential Building Unit, or High Occupancy Building Unit is proposed to be located within one thousand (1,000) feet of an Production Site or Well Site, the following requirements shall apply:

1. At such time as the property to be developed is platted or replatted, the plat shall show the one-thousand-foot radius on the property from such Production Site or Well Site and shall contain a note informing subsequent property owners that certain lots shown on the plat are in close proximity to an Production Site or Well Site.

2. For residential developments requiring a declaration pursuant to the Colorado Common Interest Ownership Act, a statement shall be included in such declaration specifying the lots within such residential development upon which dwellings may be constructed that are within one thousand (1,000) feet of an Production Site or Well Site. The approved plat for such residential development shall be attached to the recorded declaration. Where no such declaration is required, the property owner shall record a statement on the property where the dwelling is located indicating that such property is located within one thousand feet of an o Production Site or Well Site.

iv. Fencing. If any residential development is proposed to be located within five hundred (500) feet of an oil and gas location, and if an existing fence does not surround the oil and gas location, the developer must erect a 6’ privacy fence that restricts public access to the Production Site or Well Site along the property boundary between the Production Site and Well Site and the development.

2. Exceptions.

a. Existing Oil and Gas Locations. The location and setback requirements may be waived if an exception has been granted by the Director pursuant to COGCC Rule 604.

b. Existing Surface Use Agreement or Site Specific Development Plan. An Owner or Applicant may agree to locate future Building Units closer to existing or proposed Oil Well than otherwise allowed under COGCC Rule 604 pursuant to a valid Surface Use Agreement or site specific development plan (as defined in § 24-68-103, C.R.S., that establishes vested property rights as defined in § 24-68-103, C.R.S.) that expressly governs the location of Wells or Production Facilities on the
12.8 Compliance with State Environmental Requirements

The approval of a Conditional Use Permit shall not relieve the Operators from complying with all current applicable State and federal regulations and standards concerning air quality, water quality, and waste disposal.

12.9 Noise Regulation and Special Mitigation Measures

1. The application of a Conditional Use Permit shall not relieve an Operator from complying with all applicable State laws and regulations concerning noise.

2. Exhaust from all engines, motors, coolers and other mechanized equipment shall be vented in a direction away from all occupied buildings to the extent practicable.

3. Where a Well and Well Site or Production Site do not comply with the required setback or other requirements of this Article or where the Well and Well Site or Production Site are in an area of particular noise sensitivity, additional noise mitigation may be required. An area of particular noise sensitivity includes but is not limited to the following: hospitals, dwelling units, nursing homes, hotels, churches and designated wildlife preserves. In determining noise mitigation, specific site characteristics shall be considered, including but not limited to the following:
   a. Nature, proximity, location and type of adjacent development;
   b. Prevailing weather patterns, including wind directions;
   c. Vegetative cover on or adjacent to the site; or
   d. Topography.

4. The level of required noise mitigation may increase with the proximity of the Well and Well Site or Production Site to areas of particular noise sensitivity or the level of noise emitted by the Well and Well Site or Production Site. One or more of the following additional noise abatement measures may be required:
   a. Acoustically insulated housing or cover enclosing the motor or engine;
   b. Noise management plan identifying hours of maximum noise emissions, type, frequency and level of noise to be emitted, and proposed mitigation measures; or
   c. Any abatement measures required by the Commission for high-density areas, if applicable.

12.10 Visual Impact/Aesthetics Regulation and Special Impact Measures
1. **Visual Impacts and Aesthetics.**

   a. To the maximum extent practicable, oil and gas facilities shall be located away from prominent natural features, such as distinctive rock and land forms, vegetative patterns, ditch crossings, Town or County approved open space areas and other approved landmarks to abate the visual impacts of oil and gas facilities.

   b. To the maximum extent practicable, oil and gas facilities shall be located to avoid crossing hills and ridges or silhouetting.

   c. To the maximum extent practicable, the Applicant shall use structures of minimal size to satisfy present and future functional requirements.

   d. To the maximum extent practicable, when clearing trees and vegetation for construction of oil and gas facilities, the Applicant shall feather and thin edges of vegetation. The Applicant shall replant cleared trees and vegetation to screen facilities to the maximum extent practicable.

   e. To the maximum extent practicable, the Applicant shall locate facilities at the base of slopes to provide a background of topography and/or natural cover.

   f. The Applicant shall replace earth adjacent to water crossings at slopes less than the normal angle of repose with the soil type of the site.

   g. To the maximum extent practicable, the Applicant shall align access roads to follow existing grades and minimize cuts and fills.

      i. Facilities shall be painted as follows:

         1. Uniform, noncontrasting, nonreflective color tones.

         2. Color matched to land, not sky, slightly darker than adjacent landscape.

         3. Exposed concrete colored to match soil color.

2. **Special Mitigation Measures: Visual.** Where a Well, Well Site, or Production Site does not comply with the requirements of this Article, or in areas of increased visual sensitivity as determined by the Town in its sole discretion, such as a location near to and/or visible from a residential area, the Applicant shall submit a visual mitigation plan including one or more of the following standards, as appropriate:

   a. To the maximum extent practicable, exterior lighting shall be directed away from residential areas, or shielded from said areas to eliminate glare.

   b. One or more of the following landscaping practices may be required, where practicable, on a site specific basis:
i. Establishment and proper maintenance of ground covers, shrubs and trees.

ii. Shaping cuts and fills to appear as natural forms

iii. Cutting rock areas to create irregular forms.

iv. Designing the facility to utilize natural screens.

v. Construction of fences for use with landscaping and or berming.

3. Other Special Mitigation Measures. The Applicant shall keep the Town and public and private streets or roads reasonably free of mud or other materials during drilling and completion operations and during well operations. The Applicant shall use its best efforts to keep the Well Site or Production Site free of trash, litter and other refuse during and at the completion of drilling and shall not in any case bury said trash. The Operator shall construct and manage pits in accordance with applicable State and federal regulations.

12.11 Abandonment and Plugging of Wells

The approval of a Conditional Use Permit shall not relieve the Operator from complying with all Commission rules with respect to abandonment and plugging of Wells. The Operator shall provide the Town with any Commission plugging and/or abandonment application at the time that it is filed with the Commission. The Applicant shall abandon flowlines in accordance with applicable State rules and regulations.

12.12 Seismic Operations

The approval of Conditional Use Permit shall not relieve the Operator from complying with all Commission rules and regulations with respect to seismic operations. All notices which an Operator is required to file with the Commission with respect to seismic operations shall be filed with the Town on a timely basis. The Town shall comply with the same confidentiality requirements which bind the Commission.

12.13 Signage

The approval of a Conditional Use Permit shall not relieve the Operator from complying with all Commission rules with respect to signs and signage. In addition, the Operator shall maintain in good, readable condition all signs required by the Land Use Code.

12.14 Reclamation

The approval of a Conditional Use Permit shall not relieve the Operator from complying with all Commission rules and regulations with respect to site reclamation.

12.15 Geologic Hazard, Floodplain, Floodway Location Restrictions

All equipment at Well Sites and Production Sites in geological hazard and floodplain areas shall be anchored to the extent necessary to resist flotation, collapse, lateral movement, or
subsidence and to the extent necessary to comply with the Federal Emergency Management Act.

12.16 Access Roads

1. All private roads used to maintain access to the tank batteries or the Well Site or Production Site shall be improved and maintained according to the following standards:

   a. **Tank battery access roads.** Access roads to tank batteries shall be subject to review by the Town Engineer in accordance with the following minimum standards:

      i. A graded gravel roadway having a prepared subgrade and an aggregate base course surface a minimum of six inches thick compacted to a minimum density of ninety-five percent of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures. The aggregate material, at a minimum, shall meet the requirements for Class 3, Aggregate Base Course as specified for aggregate base course materials in the Colorado Department of Transportation’s “Standard Specifications for Road and Bridge Construction,” latest edition.

      ii. Graded so as to provide drainage from the roadway surface and constructed to allow for cross drainage of waterways (such as roadside swales, gulches, rivers, creeks and the like) by means of an adequate culvert pipe. Adequacy of the pipe is subject to approval of the Town Engineer.

      iii. Maintained so as to provide a passable roadway free of ruts and snow at all times.

   b. **Wellhead access roads.** Access roads to Wellheads shall be subject to review by the Town’s Engineer in accordance with the following minimum standards:

      i. A graded, dirt roadway compacted to a minimum density of ninety-five percent of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures and approved by the Town Engineer.

      ii. Graded so as to provide drainage from the roadway surface and constructed to allow for cross drainage of waterways by means of an adequate culvert pipe. Adequacy of the pipe shall be subject to approval by the Town Engineer.

      iii. Maintained so as to provide a passable roadway generally free of ruts and snow at all times.

   c. **Public access roads.** An extra-legal vehicle or load permit shall be required for all extra-legal vehicles or loads as defined in §§ 42-4-401 through 42-4-411, C.R.S., which use Town streets. Said permit, if required, shall be obtained from the Town Engineer prior to such use. The Applicant shall comply with all Town and State
regulations regarding weight limitations on streets within the Town, and the Applicant shall minimize extra-legal truck traffic on streets within the Town and provide accessible roads free of ruts and snow.

12.17 Wildlife Impact Mitigation

1. **Wildlife.** When a Well Site or Production Site is located within a designated Sensitive Wildlife Habitat as shown on a map prepared by the Colorado Parks & Wildlife, the Applicant shall consult with Colorado Parks & Wildlife to obtain recommendations for appropriate site specific and cumulative impact mitigation procedures. The Operator shall implement such mitigation procedures as are recommended by Colorado Parks & Wildlife after consultation with the Town.

2. **Endangered Species.** The Applicant shall not engage in activities which, in the opinion of the Colorado Parks & Wildlife, threaten endangered species.

12.18 Review Criteria

1. The Planning Commission shall review and make recommendations to the Town Council who shall then approve a Conditional Use Permit application if the application submitted by the Applicant conforms to the following requirements:

   a. The site plans for a Well Site or Production Site application comply with the requirements of Section 12.4 of this Article.

   b. The vicinity maps for a Well Site or Production Site application comply with the requirements of Section 12.4 of this Article.

   c. The narrative for a Well Site or Production Site application complies with the requirements of Section 12.4 of this Article.

   d. The Well location and setbacks comply with the requirements of Section 12.7 of this Article.

   e. When applicable, compliance with the provisions for mitigation of noise required in Section 12.09 of this Article.

   f. When applicable, compliance with the provisions for visual special mitigation required in Section 12.10 of this Article.

   g. When applicable, compliance with the provisions for geologic hazards, floodplains or floodway required in Section 12.15 of this Article.

   h. When applicable, compliance with the provisions for wildlife mitigation procedures required in Section 12.17 of this Article.

   i. The Applicant and the Town have entered into a Memorandum of Understanding as required by Section 12.4 of this Article.
2. The Council decision shall be based upon evidence presented in the application, submitted as part of the public record, and at the public hearing. Following the conclusion of the public hearing, the Council may proceed to render its provisional decision orally on the application, or it may take the matter under advisement until the next regularly scheduled Town Council meeting, at which time it shall orally render its decision. In the event that an application is granted with conditions the Applicant may, within fourteen (14) days of the Council decision, request a rehearing to demonstrate that removal or modification of one or more of the conditions is necessary to prevent waste or protect owners of correlative rights in a common source to a fair share of production profits or that the decision is otherwise inconsistent with State laws and regulations. Following the Council’s oral announcement of its decision, and any subsequent rehearing, a written resolution shall be adopted as its final action or decision on the application. This written resolution shall set forth findings of the Council. The Town Attorney shall prepare the written resolution for Council consideration within fourteen (14) days of the oral decision, or any subsequent rehearing. Such written resolution shall be adopted within twenty-one (21) days of the announcement of the Council’s oral decision, unless the Applicant requests rehearing, in which case the written resolution shall be adopted within thirty (30) days of the oral decision. For the purposes of judicial review, the Council’s final action or decision on an application shall be deemed to have been made as of the date upon which the Council executes the written resolution, which shall constitute the final decision of the Council.

12.19 Emergency Response Costs

The Operator shall reimburse the Town or the fire district for any emergency response costs incurred by the Town or the fire district in connection with activity at the Well Site or Production Site, except that the Operator shall not be required to pay for emergency response costs where the response was precipitated by an error of the Town.

12.20 Violation and Enforcement

1. Unlawful to Construct or Install Unapproved Oil and Gas Facilities. Except as otherwise provided in this Article, it is unlawful to construct, install or cause to be constructed or installed any oil and gas facility within the Town unless approval has been granted by the Council. The unlawful drilling or redrilling of any Well or the production therefrom is a violation of this Article.

2. Penalty. Any person, firm, corporation or legal entity that constructs, installs or uses, or which causes to be constructed, installed or used, any oil, gas or Injection Well, Well Site or Production Site or commits any act or omission in violation of any provision of this Article or of the conditions and requirements of a Conditional Use Permit may be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or by both such fine and imprisonment. Each Day of such unlawful operation constitutes a separate violation.

3. Civil Action. In case any building or structure is or is proposed to be erected,
constructed, reconstructed, altered or used, or any land is or is proposed to be used, in violation of any provision of this Article or the conditions and requirements of the Conditional Use Permit, the Town Attorney, in addition to the other remedies provided by law, ordinance or resolution, may institute an injunction, mandamus, abatement or other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration or use.

4. **False or Inaccurate Information.** The Council may revoke a Conditional Use Permit if it is determined after an administrative hearing held on at least ten (10) days' notice to the Applicant, that the Applicant provided information and/or documentation upon which approval was based, which the Applicant, its agents, servants or employees, knew, or reasonably should have known, was materially false, misleading, deceptive or inaccurate.

5. **Prospective Application.** Unless specifically provided otherwise, this Article shall apply only to Wells which are drilled in the Town on and after the date that this Article is adopted. The Reentering of a Well in existence prior to the date of adoption of this Article for purposes of deepening, recompleting or reworking shall not require approval of a Conditional Use Permit.

6. **Recovery of Fees.** Should the Town prevail in any action for legal or equitable relief for a violation of the provisions of this Article, in addition to any other penalties or remedies which may be available, the Town shall be entitled to recover any damages, costs of action, expert witness fees and reasonable attorney's fees incurred.

12.21 **Reserved**
<table>
<thead>
<tr>
<th>TO:</th>
<th>Town Council</th>
</tr>
</thead>
<tbody>
<tr>
<td>FROM:</td>
<td>Eric Fuhrman</td>
</tr>
<tr>
<td>DATE OF MEETING:</td>
<td>May 28, 2019</td>
</tr>
<tr>
<td>TITLE / SUBJECT:</td>
<td>A Resolution Approving the Construction of the Rendezvous Access Road</td>
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**DESCRIPTION**
A Resolution Approving the Construction of the Rendezvous Access Road

**SUMMARY**
The Rendezvous Access road is a connection from Harmony Road to Timnath Trail Drive in the Rendezvous subdivision. The Town is obligated to build this connection per the Subdivision Improvement Agreement for the Rendezvous subdivision.

**RECOMMENDATION**
Staff recommends approval.

**KEY POINTS**
- Construction of the road is an obligation of the Town per the Subdivision Improvement Agreement.
- Town requested a bid from Connell Resources, Inc. as they are currently onsite doing the development work. The Rendezvous Access Road is a small project, and by utilizing the onsite contractor, can get an economy of scale by adding it to a larger project.
- Bid was reviewed in relation to other bids recently received and was in line with those bids.
- The amount requested is $217,000 for construction and geotechnical services. TST will provide construction observation services under a previously approved authorization.

**ADVANTAGES**
Completes a 2019 CIP project and a Town obligation.

DISADVANTAGES
None.

FINANCIAL IMPLICATIONS
Expense is a 2019 CIP budgeted item.

RECOMMENDED MOTION
- I move to approve a resolution approving the construction of the Rendezvous Access Road.

ATTACHMENTS
1. Resolution
2. Location of Access Road
3. Town Council Purchase Authorization
4. Connell Contract
TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 29, SERIES 2019

A RESOLUTION APPROVING THE CONSTRUCTION
OF THE RENDEZVOUS ACCESS ROAD

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, the Town has included this project in its 2019 Capital Improvement Projects; and

WHEREAS, the Town Council is familiar with the Project and finds it to be in the best interest of the Town, its residents, and the general public to proceed with construction;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO as follows:

Section 1. Approval
The required agreements and expenditure of funds up to $217,000 is hereby approved for the construction of the Rendezvous Access Road project. The required agreements may be finalized by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants.


TOWN OF TIMNATH, COLORADO

______________________________
Aaron Pearson, Mayor Pro Tem

ATTEST:

______________________________
Milissa Peters-Garcia, CMC
Town Clerk
RENNTEVOUS FILING NO. 1

LOCATED IN THE NORTH HALF AND THE SOUTHEAST QUARTER OF SECTION 2, T. 8 N., R. 68 W. OF THE 6TH P.M.

TOWN OF TIMNATH, COUNTY OF LAIMER, STATE OF COLORADO
Town Council Purchase Authorization

Date: May 17, 2019
Vendor: Connell Resources, Inc.
Department: Engineering
Project: Rendezvous Access Road (Fewell Infrastructure)

Description: Construction of an access road from Harmony Road to Timnath Trail Drive across the Fewell property. Includes a right turn deceleration lane on Harmony Road.

<table>
<thead>
<tr>
<th>Description</th>
<th>Approved Budget</th>
<th>Current Balance</th>
<th>Additional Budget Requested</th>
<th>Requested</th>
<th>Budget Remaining</th>
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<tr>
<td>Fewell Infrastructure</td>
<td>$640,000</td>
<td>$615,000</td>
<td>$0</td>
<td>$217,000</td>
<td>$398,000</td>
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</table>

Advantages: Town is required to build this access road per the agreement with the Rendezvous developer. Connell Resources is currently onsite doing the infrastructure improvements for the development.

Disadvantages: None

Financial Impact: 2019 CIP budgeted project.

Recommendation/Justification: Recommend approval as it is a 2019 CIP item and is an obligation of the Town to complete.

Requesting Department Signature: [Signature]
Date: 5/12/19

Town Manager Signature: [Signature]
Date: 5/17/2019
CONTRACTOR AGREEMENT  
For Rendezvous Access Road (Fewell Infrastructure)  

This CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “Agreement”) is made this ___ day of __________, 2019, by and between THE TOWN OF TIMNATH, a home rule municipal corporation and political subdivision of the State of Colorado (the “Owner”), and Connell Resources, Inc. (the “Contractor”). The Owner and Contractor are referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

A. The Owner was organized pursuant to and in accordance with the provisions of Title 31 of the Colorado Revised Statutes to provide certain services within its corporate boundaries.

B. The Owner is authorized to contract for the provision of such services pursuance to § 31-15-101, C.R.S., as amended.

C. Owner has contracted with TST, Inc. Consulting Engineers (the “Owner’s Representative”), in part for construction management and oversight of the Work (as defined below), who will assume all duties, responsibilities and authorities assigned by the Owner to the Owner’s Representative or as provided for in the Contract Documents.

D. Contractor, an independent contractor, has received and examined the plans, specifications and terms of the contract for the Work (as defined below) and project described in this Agreement (the “Project”).

E. Contractor represents that it has the professional experience, skill and resources to perform the services, as set forth herein.

F. The Parties desire to enter into this Agreement, which represents the entire and integrated Agreement between the Parties and is intended to supersede all prior negotiations, representations and agreements between the Parties.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Scope of Work/Notice to Proceed.
   a. In General. Contractor agrees to provide those goods and services necessary to complete the work as described in the Scope of Work set forth in attached Exhibit A and this Agreement (the “Work”) to be constructed in strict accordance with this Agreement, including any and all Plans and Specifications as set forth in Exhibit B, and the General Conditions attached as Exhibit C, which are incorporated herein by this reference (collectively, the “Contract
Documents”). In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in any Exhibit, the terms in the body of this Agreement shall govern. The Work also includes those tasks, materials, equipment and services that are required to comply with applicable law, or necessary to obtain inspections and approvals, or reasonably implied or customarily furnished by a Contractor performing work as described in the Contract Documents. Contractor shall direct its best efforts to complete the Work in accordance with the highest industry standards, and shall comply with all material and reasonable requirements imposed by the Owner. Contractor shall provide, at Contractor’s sole cost and expense, all labor, services, administrative support, equipment and materials (which, unless otherwise specified, shall be new), which are necessary to ensure that the Work is adequately completed under, or reasonably inferable from, the Contract Documents. Contractor shall complete the Work in such a manner as to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees of Owner.

Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the Owner in any manner whatsoever, except to the extent specifically provided in this Agreement.

b. Notice to Proceed. Contractor shall commence the Work upon execution of this Agreement by both Parties, which execution shall be deemed a Notice to Proceed for such Work.

2. Job Reports. Contractor shall provide the Owner’s Representative, on a monthly basis (or more frequently upon the request of the Owner), on or before the end of each month, in a form satisfactory to the Owner, a narrative progress and status report describing Work in progress and results achieved during the reporting period, including a description of the Work performed during the invoice period and the Work anticipated to be performed during the ensuing invoice period.

3. Hazardous Materials. Contractor hereby covenants and agrees that no person engaged, hired, or contracted by Contractor to provide services or to perform any portion of the Work under this Agreement will use, dispose of, store or be in possession of hazardous materials anywhere on the Project at any time, except with Owner’s prior knowledge and consent, and in strict compliance with applicable law.

4. Repairs. The Contractor shall notify the Owner’s Representative immediately of any and all damage caused by the Contractor to Owner’s property, and that of third persons. The Contractor will promptly repair or, at the Owner’s option, reimburse the Owner for the repair of any damage to property caused by the Contractor or its employees, agents, subcontractors or equipment.

5. Performance Standards.

a. The Contractor represents that it has or shall acquire the capacity and the professional experience and skill to perform the Work and that the Work shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform services of a similar nature to those specified in this Agreement. If competent professionals find that the Contractor’s performance of the Work does not meet this standard, the Contractor shall,
at the Owner’s request, re-perform the Work not meeting this standard without additional compensation.

b. The services of the Contractor shall be undertaken and completed to assure their expeditious completion in light of the purposes of this Agreement. If performance of the Work by the Contractor is delayed due to factors beyond the Contractor’s reasonable control, or if conditions of the scope or type of services are expected to change, Contractor shall give timely notice to the Owner’s Representative of such a delay or change and receive an equitable adjustment of time and/or compensation, as negotiated between the Parties.

c. The Work provided under this Agreement shall be adequate and sufficient for the intended purposes and shall be completed in a good and workmanlike manner.

d. All Work shall be performed in compliance with all applicable state, local and federal laws, statutes, codes, ordinances, executive orders and rules and regulations in effect when the Work is complete.

e. The responsibilities and obligations of the Contractor under this Agreement shall not be relieved or affected in any respect by the presence of any agent, consultant, sub-consultant or employee of the Owner, including, but not limited to, the Owner’s Representative.

f. Acceptance by the Owner of the Work or any documents performed or prepared by the Contractor by the Owner shall not relieve the Contractor of any responsibility for deficiencies, omissions or errors in said Work or documents.

g. The Owner shall provide the Contractor with all known information, conditions, standards, criteria, and objectives which affect the Work, and the Contractor shall be able to rely upon such information. The Owner shall provide the Contractor with reasonable access to any work sites necessary for completion of the Work, as the Owner is authorized to do so under applicable law.

6. Contract Price. Contractor’s compensation for the Work shall be $179,653.00 (the “Contract Price”). The Contract Price shall be a (check one):

- [X] Fixed Price
- [ ] Unit Price
- [ ] Guaranteed Maximum Price
- [ ] Other: ________________________________

The Contract Price shall be paid pursuant to the payment terms set forth below. Prior to commencing the Work, Contractor shall, if applicable, submit a proposed schedule of values to be used in processing pay applications. Owner shall have the right to terminate this Agreement without liability if the Parties cannot agree upon the schedule of values. The Contractor shall not be entitled to any additional compensation or reimbursement except as set forth in this Agreement.
7. Applications for Payment.

a. Progress Payments. Once per month on or before the 25th day of each month, Contractor shall invoice Owner for completed Work which has not been previously invoiced. Invoices shall be supported by such additional documentation as reasonably required by Owner or Owner’s Representative. The invoiced amount shall be based on the quantity of the work completed (if this Agreement is a unit price contract) or the percentage of the work completed (if this Agreement is a fixed fee/lump sum contract) during the period of time covered by the invoice, less retention. With each payment application, Contractor shall execute and submit Contractor’s form conditional lien waiver for itself, and obtain and submit the same from all of its vendors, subcontractors, suppliers and materialmen, waiving lien rights for Work performed through the period covered by the application. Each new payment application shall be accompanied by unconditional lien waivers signed by Contractor and all vendors, subcontractors, suppliers and materialmen applicable for payments previously issued by Owner. Payment will not be made for materials or equipment stored at the Project but not yet incorporated into the Work without the prior authorization of Owner and proof satisfactory to Owner that the materials and equipment are insured for loss. Payment shall not alter Contractor’s responsibility for loss or damage which occurs prior to final acceptance by Owner of the completed Work.

b. Approval/Disapproval of Application for Payment. Owner or Owner’s Representative shall promptly review each complete payment application to determine Contractor’s entitlement to payment. The approved portion of the invoiced amount shall be paid to Contractor within thirty (30) days of approval of the payment application by Owner or Owner’s Representative. If disapproved, Owner or Owner’s Representative shall return the application to Contractor with a written explanation of the disapproval, and Contractor shall make the necessary corrections and resubmit to Owner or Owner’s Representative. Payments by Owner, including final payment, shall not constitute approval or final acceptance of the Work or any item of cost. Owner shall have the right at any time to pay Contractor by issuance of joint checks made payable to Contractor and Contractor’s vendors, subcontractors, suppliers and materialmen.

c. Retention. If Contractor is satisfactorily performing this Agreement, progress payments shall be in an amount equal to ninety-five percent (95%) of the calculated value of any Work completed, less the aggregate of payments previously made, until all of the Work required by this Agreement has been performed. If, in the opinion of Owner, satisfactory progress is not being made on the Work, or if a claim is filed under § 38-26-107, C.R.S., Owner may retain such additional amounts as may be deemed reasonably necessary by Owner to assure completion of the Work or to pay such claims and any engineer’s and attorney’s fees reasonably incurred or to be incurred by Owner in defending or handling such claims. The withheld percentage of the Agreement Price shall be retained until this Agreement is completed satisfactorily and the Project is finally accepted by Owner in accordance with the provisions of this Agreement. Progress payments shall not constitute final acceptance of the Work. The Owner shall make a final settlement in accordance with § 38-26-107, C.R.S., within sixty (60) days after this Agreement is completed satisfactorily and finally accepted by the Owner.

d. Withholding of Payment. Owner may withhold payments for any of the following reasons: (a) omitted Work, or defective Work that has not been remedied; (b)
mechanic’s liens filed, or reasonable evidence indicating that liens will be filed, by Contractor or its suppliers or Contractors, in which case Owner may withhold one hundred fifty percent (150%) of the lien claim; (c) Contractor’s failure to properly make payments to others; (d) Owner’s reasonable doubt that the Work can be completed for the balance of the unpaid Contract Price; (e) the Work is behind schedule or there are reasonable indications that the Work will not be completed on schedule; (f) any damage to the work of a subcontractor caused by or attributable to Contractor; (g) any dispute between Contractor and any subcontractor or contractor employed by Owner or Contractor on the Project, and (h) Contractor’s failure to submit adequate proof of the insurance coverage required by this Agreement. Whenever the grounds for withholding have been removed, Owner shall pay the amount withheld within fifteen (15) days, less any expenses incurred or damages sustained by Owner. Although not required to do so, Owner may directly pay any of Contractor’s laborers, subcontractors or materialmen. Such payments shall be deemed payment to Contractor and shall be credited against the Contract Price, and any amount by which such payments exceed the Contract Price then due shall be immediately reimbursed by Contractor. The rights to withhold payment shall be in addition to all other rights and remedies of Owner.

e. Conditions to Final Payment. Upon completion of the Work and written notice to Owner, Owner or Owner’s Representative shall inspect the Work and may reject any portion not in conformity with the Contract Documents. Defective materials, equipment or work shall be remedied immediately by Contractor before final payment. Owner shall have the right to determine the acceptability of Contractor’s performance and conformance with the Contract Documents, which determination shall be conclusive and binding upon Contractor. Final acceptance by Owner is subject to the provisions of this Agreement and in no manner affects or releases any warranty or guarantee with Contractor or manufacturers of equipment. The Work shall not be considered for “Final Acceptance” until all of the following have occurred:

i. Owner or Owner’s Representative has inspected the Work with Contractor and any and all “punch list” items have been completed.

ii. Owner has received from Contractor: (1) a complete list of all subcontractors and suppliers including address, telephone numbers and contact persons; (2) all operation and maintenance manuals; (3) any and all written guarantees from manufacturers, suppliers, or subcontractors; and (4) all as-built records and plans.

iii. There are no known undischarged obligations, liens, attachments or claims in connection with the Work, and Owner has received lien waivers, releases and such other evidence of full payment to all vendors, subcontractors, suppliers and materialmen.

iv. Owner has obtained all necessary written consents from any and all sureties providing bonds under this Agreement.

f. Final Application for Payment. Upon Owner’s Final Acceptance of the Work as specified in this Agreement, the Contractor shall submit to Owner its “Final Application for Payment.” The Final Application for Payment shall not be processed for payment by Owner
unless it is accompanied by original lien releases executed by Contractor and all vendors, subcontractors, suppliers and materialmen, equal to the total amount claimed by Contractor to be due under this Agreement. Contractor shall also submit an affidavit that all payrolls, bills for materials and equipment and other indebtedness have been paid or otherwise satisfied in full and indemnifying Owner against such liability.

g. **Payment.** Upon publication of notice of final settlement pursuant to § 38-26-107, C.R.S. and approval of the Final Application for Payment, Owner shall pay Contractor within thirty (30) days the approved portion of the Final Application for Payment, less one hundred fifty percent (150%) of any disputed amounts. Contractor’s acceptance of final payment shall constitute its waiver of any and all claims arising out of or any way related to this Agreement. The making of final payment to Contractor shall not constitute a waiver of any claims by Owner.

h. **Appropriations Statement.** In compliance with § 24-91-103.6, C.R.S., the following statements are included in this Agreement:

i. The Owner has budgeted and appropriated an amount of money equal to or in excess of the Contract Price for the Work to be performed under this Agreement.

ii. The Owner is prohibited from issuing any change order or other form of order or directive requiring additional compensable work to be performed by the Contractor, if such directive causes the aggregate compensation amount under the Agreement to exceed the amount appropriated for the original Agreement, unless the Contractor is given written assurance by the Owner that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in the Contract. “Remedy-granting provision” means any contract clause which permits additional compensation in the event that a specific contingency or event occurs. Such term shall include, but is not limited to, change clauses, differing site conditions clauses, variations in quantities clauses and termination for convenience clauses.

8. **Completion Date / Contract Time.** Time is of the essence in completing the Work. Contractor shall perform its Work to meet the Owner’s schedule for completion, but shall complete the Work no later than **November 1, 2019.** If Owner determines the Contractor is not complying with the schedule, Contractor shall provide, at Contractor’s cost, any additional worker hours, labor, equipment and material necessary to comply with the project schedule.

9. **Contractor Is Independent Contractor.** The Parties acknowledge and agree that, in performing the Work, Contractor, its employees and agents are independent contractors and are not acting as, nor are to be deemed or considered to be, agents, employees, joint ventures or partners of Owner. The Contractor shall have full power and authority to select the means, manner and method of performing its duties under this Agreement, without detailed control or direction from the Owner, and shall be responsible for supervising its own agents, employees or subcontractors. The Owner is concerned only with the results to be obtained. The Owner shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives,
including coverage or benefits related but not limited to: local, state or federal income or other tax contributions, insurance contributions (e.g. FICA taxes), workers’ compensation, disability, injury, health or life insurance, professional liability insurance, errors and omissions insurance, vacation or sick-time benefits, retirement account contributions, or any other form of taxes, benefits or insurance. The Contractor shall be responsible for its safety, the safety of its employees, the public and the work site in general, and shall comply with all applicable provisions of local, state and federal laws, regulations and orders affecting safety and health, including but not limited to the Occupational Safety and Health Act of 1970 (“OHSA”). Contractor is solely responsible for the payment to its employees of all wages and other compensation, and for withholding of appropriate taxes and any and all benefits, and for strict compliance with all laws, rules, ordinances and regulations concerning employer/employee relationships and the Work, including, without limitation, worker’s compensation insurance laws.

10. **Contractor’s Representations and Warranties.** Contractor represents and warrants to Owner that Contractor is skilled, properly licensed and qualified for the Project, and experienced in all aspects of providing or contracting for the performance of the Work. Contractor shall supply an adequate number of employees who have been trained, qualified and are competent to perform the Work, and shall provide qualified on-site supervision at all times when Work is being performed at the Project.

11. **Quality of Materials and Services.** No substitutions of material from those specified in the Contract Documents shall be permitted unless approved in writing by Owner or Owner’s Representative. Owner reserves the right to inspect the Work at any time, and Contractor hereby agrees to comply with all reasonable requests by Owner to prove Contractor’s compliance with the requirements of the Contract Documents, and to correct Work not conforming to the requirements of the Contract Documents, at Contractor’s sole cost and expense.

12. **Changes in the Work.** Owner shall have the right to modify the Work, order extra services of Contractor, delete portions of the Work or make changes in the Work or the Plans and Specifications, and Contractor shall be bound to perform the Work as modified by Owner’s or directions. Contractor’s compensation shall be adjusted by equitable additions or deductions to account for increases or decreases in the Work, as modified. Owner shall submit a written change order request for each such change which, when issued and signed by Owner and Contractor, shall constitute an amendment to this Agreement (“Change Order”). Contractor shall not perform any increase in the cost or scope of the Work without Owner’s prior written authorization. No change, alteration, or deviation shall be made, and no claim for additional compensation shall be valid unless supported by an executed, written Change Order.

13. **Prevention of Liens.** Contractor shall pay when due all claims asserted by, and debts in favor of, persons or entities who furnish labor, material, services, fixtures or equipment applied to or utilized in the performance of the Work. Contractor shall prevent the recordation of any claim of lien upon the Project and the garnishment or attachment of funds held by Contractor or others by promptly satisfying all claims and debts in connection with the Work which are or may be asserted against the Project, Owner or Contractor. In addition, Contractor shall use all possible means to cause (a) the release of all claims for payment and (b) the dismissal of all suits against the Project, Owner or Contractor, which have arisen as a result of the performance of the
Work or other activities or obligations of Contractor under this Agreement. Contractor shall deliver to Owner acceptable proof of such release or dismissal within five (5) days after Owner’s written demand. If Contractor fails to obtain release or dismissal within five (5) days after demand, then in addition to other remedies, Owner shall have the right (but not the obligation) to use reasonable means to cause said claim or lien to be paid, rescinded, discharged, compromised, dismissed or removed including, without limitation, posting of a bond to cause the removal of such lien. Upon Owner’s demand, Contractor shall promptly reimburse all costs incurred by Owner in paying or discharging such lien and/or claim including, without limitation, attorneys’ fees and bond premiums, which payment shall not be reimbursable to Contractor or increase the Contract Price.


a. Contractor and its subcontractors shall obtain and maintain, at their sole cost and expense, during the entire term of this Agreement, Colorado statutory workers’ compensation insurance coverage, comprehensive commercial general liability insurance coverage, and commercial automobile liability insurance coverage in the minimum amounts set forth in Exhibit D attached hereto and incorporated herein by this reference. Contractor shall supply Owner with complying certificates of insurance and copies of insurance policies prior to commencing any Work. Contractor and its subcontractors shall maintain the required insurance coverage throughout the term of this Agreement. A waiver of subrogation and rights of recovery against the Owner, its directors, officers, employees and agents is required for each coverage provided. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the Owner and its respective managers, members, officers, directors, partners and employees, as additional insured. All coverage provided pursuant to this Paragraph shall be written as primary policies, not contributing with and not supplemental to any coverage that the Owner may carry, and any insurance maintained by the Owner shall be considered excess. The Owner shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein.

b. Any such policy of insurance obtained to comply with this section shall provide that Owner shall receive thirty (30) days written notice prior to the cancellation of any such policy. Contractor shall also provide the Owner with thirty (30) days written notice prior to the material modification of such policy. Contractor’s failure to purchase and maintain the required insurance shall not serve to release it from any obligations contained herein; nor shall the purchase or maintaining of the required insurance serve to limit Contractor’s liability under any provision herein. Contractor shall be responsible for the payment of any deductibles on issued policies.

c. The Contractor shall report in writing to the Owner all accidents whatsoever arising out of or in connection with the Work hereunder which result in injuries or property damage, giving full details and statements of witnesses. In addition, if any claim is made by a third person against the Contractor on account of any accident resulting or alleged to have resulted out of the performance of the Work, the Contractor shall immediately notify the Owner in writing.
15. **Indemnification.**

   a. All Work done at the Project site, or in preparing, storing, or delivering materials, tools, equipment or any other type of personal property, or in providing services for the Project, or any or all of them, to or for the Project, shall be at the sole risk of Contractor. Contractor shall, to the fullest extent permitted by law, defend all claims through legal counsel acceptable to Owner, and indemnify and hold harmless Owner and its directors, officers, contractors, employees, agents, representatives and consultants, and all of their respective successors and assigns, (collectively, the “Indemnitees”) from and against any fines, penalties, losses, liabilities, damages, injuries, claims, demands, lawsuits, actions, expenses (including actual attorneys’ fees) and costs (collectively, “Claims”) whether incurred or made by any Indemnitee or any third person, arising from or related to performance of any or all Work which is covered by or incidental to this Agreement, including without limitation, (A) any defect in workmanship or materials included in the Work or other Work performed by or on behalf of Contractor, or Contractor’s employees, agents, subcontractors, suppliers, and any other persons present on the Project under Contractor’s supervision or control (collectively, “Contractor’s Representatives” or individually a “Contractor Representative”) or any surveys, specifications or designs completed by or at the request of Contractor or any of Contractor’s Representatives and utilized in the Work, (B) any death or bodily injury to persons or damage to property involving Contractor or any of Contractor’s Representatives on the Project site or relating to the Project, and (C) any (i) use or misuse by Contractor or any of Contractor’s Representatives of the Project site, the improvements thereon or any part thereof, (ii) negligent act or failure to act, or any act which constitutes willful misconduct, by Contractor or any of Contractor’s Representatives, or (iii) violation or alleged violation by Contractor or any of Contractor’s Representatives of any law, ordinance, code, or regulation now or hereinafter enacted. Contractor shall not be responsible to indemnify Owner or any Indemnitee for the portion, if any, of any Claim found by a court of competent jurisdiction to have been caused solely by the negligence or willful misconduct of such Indemnitee. As applicable, the indemnification provisions of this Agreement are to be interpreted as compliant with the full scope of indemnification of Contractor allowed by § 13-21-111.5, C.R.S., and to the extent necessary shall be deemed modified by the Parties as needed to comply.

   b. Such indemnity is intended to apply during the period of this Agreement and its performance, and shall survive the expiration or termination of this Agreement until such later time as action on account of any matter covered by such indemnity is barred by any applicable statute of limitations, or such date as any claim or action for which indemnification may be claimed is fully and finally resolved and, if applicable, any compromise thereof or judgment or award thereon is paid in full by Contractor, and Owner or the applicable Indemnitee is reimbursed by Contractor for any amounts paid in compromise thereof or upon a judgment or award thereon and in defense of such action or claim, including actual attorneys’ fees.

   c. Contractor hereby agrees to indemnify, defend and hold the Project, Owner and Owner’s Indemnitees harmless from and against any and all liens and charges of every type, nature, kind or description, for which Contractor has received payment, which may at any time be filed or claimed against the Project, or any portion thereof, or the improvements situated thereon as a consequence, direct or indirect, of any act or omission of Contractor or its agents, servants,
employees, suppliers, subcontractors, and all costs, including attorneys’ fees, incurred as a result of the claim of any such lien.

16. **Compliance with Laws and Contractor’s Safety Regulations.** Contractor shall, at its own expense, protect its employees and all other persons on or about the Project site from risk of death, injury or bodily harm arising out of or in any way related to the Work or the acts or omissions of Contractor and all of Contractor’s Representatives. Contractor shall fully comply with all laws, ordinances, orders, codes, citations, rules, regulations, and standards concerning occupational health and safety, accident prevention, safety equipment and OSHA regulations. Contractor shall conduct inspections to ensure that safe working conditions and all necessary or appropriate safety equipment exist at the Project site, and accepts sole responsibility for providing a safe place to work for its employees and for the employees of its subcontractors and suppliers. Contractor shall indemnify, protect, defend and hold Owner and its Indemnitees harmless from any liabilities, losses, damages or expenses, including attorneys’ fees and costs, which such parties may incur as a result of any claims, causes of action, citations or work stoppages arising out of or in any way related to the alleged violation by Contractor or any Contractor Representative, of any such safety law, ordinance, order, code, citation, rule, regulation, or standard.

17. **Default.** Owner may give written notice of grounds for default to Contractor at any time if: (i) Contractor fails to perform in an adequate or specified manner or proceeds in willful violation of the Contract Documents or terms of this Agreement; (ii) performance of the Work is being delayed unnecessarily or Contractor is executing its responsibilities in bad faith or contrary to the intent of this Agreement; (iii) performance is not fully completed within the period of time specified in the Contract Documents; (iv) work to be performed by Contractor is assigned without Owner’s consent; (v) Contractor is insolvent or files for bankruptcy; (vi) Contractor makes a general assignment of assets for the benefit of creditors; (vii) a receiver is appointed for Contractor; or (viii) other serious and reasonable cause exists which jeopardizes completion of the Work. If Contractor does not remedy or otherwise correct the grounds for default within such period of time as specified by Owner, Owner may terminate this Agreement and direct Contractor to discontinue any further work on the Project, and Contractor shall immediately stop all work on the Project. Owner, in its discretion, may complete the Work, or may request the surety of Contractor to complete the Work, or may contract with others to complete the Work at the expense of Contractor and its surety. Any reasonable increase in costs over the Contract Price and any special damages incurred by Owner as a consequence of such default, including reasonable attorneys’ fees, shall be paid and satisfied in full by Contractor and its surety. Any monies due the Contractor based on work satisfactorily performed through the date of termination that were not otherwise expended in completing the Work shall be paid to the Contractor after all Work is completed.

18. **Storm Water Compliance.** Contractor shall comply with all applicable laws and regulations regarding storm water mitigation. Contractor shall implement the Best Management Practices (“BMPs”) for any Work that it performs on the Project. Owner shall be entitled to recover from Contractor all fines, fees, expenses and other penalties assessed by any governmental body because of Contractor’s alleged violations of a permit or its obligations under this Agreement.
19. **Contractor’s Warranty.**

The Contractor shall and does by this Agreement guarantee and warrant that all Work furnished, installed, or performed will be of good quality and new, unless otherwise required or permitted by the Agreement. The Contractor further warrants that the Work will conform to all requirements of the Agreement and the applicable building code and all other applicable laws, ordinances, codes, rules and regulations of any governmental authorities having jurisdiction over the Work. All materials are subject to the satisfaction and acceptance of the Owner, but payments for the completed Work will not constitute final acceptance nor discharge the obligation of the Contractor to correct defects at a later date. Such warranties set forth in the Agreement are in addition to, and not in lieu of, any other warranties prescribed by Colorado law.

a. **The Owner recognizes that this is an emergency project, with the work being completed at a non-ideal time of year. As such, the Owner recognizes that it is not feasible to apply the standard warranty.** The Contractor hereby warrants the Work for material and workmanship defects. If work is completed outside of standard asphalt paving temperatures than warranty is void. The Contractor will immediately correct or replace any Work that is defective or not conforming to the Agreement at its sole expense to the reasonable satisfaction of the Owner. The Contractor’s guarantees and warranties shall in all cases survive termination of this Agreement. This warranty shall be enforceable by the Owner, its successors and assigns.

b. Prior to final payment for any services involving Work, and at any time thereafter but before the final inspection, as set forth below, the Contractor and the Owner shall, at the request of the Owner, conduct an inspection of the Work for the purpose of determining whether any Work is defective or otherwise not in conformance with the Agreement. The Contractor’s fees and costs associated with the inspection shall be included in the compensation schedule set forth Section 6 of this Agreement and shall not be billed separately to the Owner. In the event the Contractor neglects to include the fees and costs associated with the inspection in the compensation schedule set forth Section 6 of this Agreement, the Contractor is deemed to have waived these fees and costs. After completion of the inspection, the Owner will provide the Contractor with written notice of any Work requiring corrective action. The Contractor agrees to correct or replace the defective Work within a reasonable time, as agreed to by the Parties, but in no event later than thirty (30) calendar days from the date of notice from the Owner, unless otherwise agreed to by the Owner.

c. The Contractor agrees that if warranty issues appear before payment has been made under this Agreement, the Owner may withhold payment until such warranty issues are resolved to the Owner’s satisfaction. If repair or replacement of any warranty or defective Work is not made by the Contractor promptly upon request by the Owner as set forth in this Agreement, in addition to any other remedy, the Owner may withhold any payment the Owner may owe to the Contractor, including payments under other contracts or agreements related or unrelated to the Work.

d. The Contractor shall promptly notify the Owner of any Work, whether by the Contractor, its subcontractors or any third parties, which the Contractor believes to be defective or not conforming with the Agreement.
e. The Contractor shall, at its expense, obtain all permits, licenses and other consents required from all governmental authorities, utility companies and appropriate parties under any restrictive covenants in connection with the Work. The Contractor shall comply with all of the terms and conditions of all permits, licenses and consents.

f. At or around eleven (11) months, but no more than one (1) year, after the completion and acceptance of the Work, the Contractor and the Owner shall, at the request of the Owner, conduct a final inspection of the Work for the purpose of determining whether any Work is defective or otherwise not in conformance with the Agreement. The Contractor’s fees and costs associated with the inspection shall be included in the compensation schedule set forth in Section 6 of this Agreement and shall not be billed separately to the Owner. In the event the Contractor neglects to include the fees and costs associated with the inspection in the compensation schedule set forth in Section 6 of this Agreement, the Contractor is deemed to have waived these fees and costs. After completion of the final inspection, the Owner will provide the Contractor with written notice of any Work requiring corrective action. In the event the Contractor does not correct or replace the defective Work within thirty (30) calendar days from the date of notice from the Owner, or within such other reasonable time as agreed to by the Parties, the Owner may correct or replace the defective Work and the Contractor shall reimburse the Owner for the related costs and fees.

20. Contractor Records. All documents produced by or on behalf of the Contractor prepared pursuant to this Agreement, including, but not limited to, all maps, plans, drawings, specifications, reports, electronic files and other documents, in whatever form, shall remain the property of the Owner under all circumstances, upon payment to the Contractor of the invoices representing the Work by which such materials were produced. The Contractor shall maintain electronic and reproducible copies on file of any such instruments involved in the Work, shall make them available for the Owner’s use, and shall provide such copies to the Owner upon request. Upon request of Owner, Contractor shall supply Owner with a list of the names, addresses and telephone numbers of all persons providing materials, labor or services to the Project on behalf of Contractor.

21. Termination. Owner may terminate this Agreement at any time, with or without cause, by giving Contractor not less than fifteen (15) days’ prior written notice of its election to terminate. In addition, Owner may terminate this Agreement upon seventy-two (72) hours prior written notice: (i) for just cause; or, (ii) in the event of a sale, condemnation or destruction of all or any portion of the Project. Termination shall not affect Contractor’s right to fees earned for that portion of the Work performed through the effective date of termination, which shall be paid in the ordinary course of business. In the absence of any contrary instructions, Contractor shall place no further orders or subcontracts, terminate all orders and subcontracts to the extent they relate to terminated Work, and stop work on the date and to the extent specified in the notice. Contractor shall cooperate with Owner to transfer all of Contractor’s rights and interests in any orders, subcontracts, or work, as directed by Owner. Owner may also terminate this Agreement to the extent permitted or required by § 8-17.5-101, et seq., C.R.S., without liability to Owner.

22. Right of Offset and Damages. If Contractor breaches any covenant or obligation of this Agreement, in addition to other remedies: (i) Owner shall be entitled to offset and deduct any costs, expenses or damages incurred by Owner as a result of such breach, including liquidated
23. **Assignment.** Contractor shall not assign or transfer this Agreement or any obligation imposed by this Agreement. Contractor shall subcontract only with subcontractors approved by Owner. Contractor shall not assign, anticipate, or hypothecate Contractor’s right to payment under this Agreement to any other person. Any attempted assignment shall be void and of no effect.

24. **Cooperation.** Owner reserves the right to enter into contracts and agreements for other work at the Project and Contractor agrees to cooperate and coordinate with all other contractors.

25. **Compliance with Laws.** Contractor shall at all times use due care in the performance of the Work on the Project and fulfillment of its obligations under this Agreement, and shall observe and adhere to all applicable laws, rules, regulations and ordinances promulgated by Owner from time to time and by any regulatory bodies having jurisdiction over the Project including, without limitation, obtaining required permits, inspections and approvals, and compliance with all requirements relating to hazardous materials.

26. **Protection of Project.** Contractor shall be responsible for protecting finished Work, Work in progress, materials, equipment and supplies, whether the property of Owner, Contractor, or supplied by Contractor or Owner, from harm, loss, injury, and/or damages from any cause whatsoever, until final acceptance of the Work, or termination of this Agreement, whichever shall occur first.

27. **Licenses and Permits.** Contractor represents and warrants that Contractor has obtained all licenses and permits required by law to provide and complete the Work.

28. **Governing Law.** This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Colorado, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado. Venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the Project is located. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including, but not limited to, *forum non-conveniens* or otherwise. At the Owner’s request, the Contractor shall carry on its duties and obligations under this Agreement during any legal proceedings and the Owner shall continue to pay for the Work performed under this Agreement until and unless this Agreement is otherwise terminated. In the event of any litigation between the Owner and the Contractor to enforce any provision of this Agreement or any right of either party hereto, the parties agree that the court shall award costs and expenses to the prevailing party, such costs and expenses to include...
reasonable attorneys’ fees. Otherwise, each party shall pay its own costs and fees for litigation. At the Owner’s request, the Contractor will consent to being joined in litigation between the Owner and third parties, but such consent shall not be construed as an admission of fault or liability. The Contractor shall not be responsible for delays in the performance of the Work caused by factors beyond its reasonable control including delays caused by Act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner or failure of the Owner to furnish timely information or to approve or disapprove of Contractor’s Work in a timely manner.

29. **No Waiver.** The waiver by either Party of a breach by the other of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision.

30. **Severability.** If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

31. **Entire Agreement.** This Agreement, its exhibits and matters incorporated by reference, together with all applicable law, constitutes the entire agreement between the Parties hereto with respect to the matters covered thereby and supersedes all prior negotiations, representations and agreements with respect to the matters covered in this Agreement. This Agreement may only be modified or amended by a document executed by all Parties hereto.

32. **Notices.** All notices, demands and communications (collectively, “Notices”) under this Agreement shall be delivered or sent by: (a) first class, registered or certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight carrier, addressed to the address of the intended recipient set forth below or such other address as either party may designate by notice pursuant to this Paragraph, or (c) sent by confirmed facsimile transmission, PDF or email. Notices shall be deemed given either one (1) business day after delivery to the overnight carrier, three (3) days after being mailed as provided in clause (a) above, or upon confirmed delivery as provided in clause (c) above.

Owner: Town of Timnath  
Attn: Town Manager  
4800 Goodman Street  
Timnath, CO 80547  
970-224-3211 (phone)  
970-224-3217 (fax)

With copy to: WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law  
2154 East Commons Avenue, Suite 2000  
Centennial, Colorado 80122  
Attention: Robert G. Rogers, Esq.
33. **Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Owner, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the Owner and, in particular, governmental immunity afforded or available to the Owner pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

34. **Negotiated Provisions.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed substantially and materially to the preparation of this Agreement.

35. **No Third Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

36. **Equal Opportunity; Employment Eligibility.** This Agreement is subject to all applicable laws and executive orders relating to equal opportunity and non-discrimination in employment and the Contractor represents and warrants that it will not discriminate in its employment practices in violation of any such applicable law or executive order.

The Contractor hereby states that it does not knowingly employ or contract with illegal aliens and that the Contractor has participated in or has attempted to participate in the E-Verify Program (formerly known as the Basic Pilot Program) (as defined in § 8-17.5-101, C.R.S.) in order to verify that it does not employ any illegal aliens. The Contractor affirmatively makes the follow declarations:

a. The Contractor shall not knowingly employ or contract with an illegal alien who will perform work under the public contract for services contemplated herein and will participate in the E-Verify Program or Department Program (as defined in § 8-17.5-101, C.R.S.) in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services contemplated herein.
b. The Contractor shall not knowingly enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform the services contemplated herein.

c. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.

d. The Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

e. If the Contractor obtains actual knowledge that a subcontractor performing the services under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to:

   i. Notify the subcontractor and Owner within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien.

   ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required above the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

f. The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that such Department is undertaking pursuant to the authority established in §8-17.5-102, C.R.S.

g. If the Contractor violates a provision of the Agreement pursuant to §8-17.5-102, C.R.S., Owner may terminate the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the Owner.

37. Subject To Annual Appropriation and Budget. Owner does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of Owner hereunder requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations. The Contractor expressly understands and agrees that Owner’s obligations hereunder shall extend only to monies appropriated for the purposes of this Agreement by the Board 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 Owner, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of Owner or statutory debt limitation, 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 Owner funds.
obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.

38. TAX EXEMPT STATUS. The Owner is exempt from Colorado State sales and use taxes. Accordingly, taxes from which the Owner is exempt shall not be included in any invoices submitted to the Owner. The Owner shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase the materials tax free. Pursuant to § 39-26-114(1)(a)(XIX)(A), C.R.S., Contractor and subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.

39. Counterpart Execution. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto.

[Remainder of Page Intentionally Left Blank. Signature Pages Follow.]
IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

OWNER:

THE TOWN OF TIMNATH, a home rule municipal corporation of the State of Colorado

_______________________________
ATTEST:

_______________________________
Town Clerk
CONTRACTOR:
Connell Resources, Inc.

______________________________
Printed Name: ____________________
Title: ______________________________

STATE OF COLORADO )
COUNTY OF ____________ ) ss.

The foregoing instrument was acknowledged before me this ___ day of ____________,
2019, by ____________________________, as the ____________________________
of ________________________________.

WITNESS my hand and official seal.

My commission expires: ________________.

(S E A L)

______________________________
Notary Public

Contractor’s Signature Page to Contractor Agreement for Rendezvous Access Road, dated ________________ __, 2019
LIST OF EXHIBITS

Exhibit A - Scope of Work
Exhibit B - Plans and Specifications
Exhibit C - General Conditions
Exhibit D - Insurance Requirements
# QUOTATION

**Submitted To:** Town Of Timnath  
**Address:** 4800 Goodman Street  
Timnath, CO 80547  
**Contact:** Eric Fuhrman, P.E.  
**Phone:** 970-224-3211  
**Fax:** 970-224-3217  
**Bid Title:** 190507 RENDEZVOUS ACCESS ROAD - TOWN OF TIMNATH  
**Bid Number:** #1  
**Project Location:** Rendezvous Subdivision  
**Project City, State:** Timnath, CO  
**Engineer/Architect:** TST, Inc.  

<table>
<thead>
<tr>
<th>Item #</th>
<th>Item Description</th>
<th>Estimated Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total Price</th>
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<tr>
<td>1</td>
<td>Mobilization</td>
<td>1.00 LS</td>
<td>$11,000.65</td>
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<td>Potholing</td>
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<td><strong>Total Price for above Administration &amp; Miscellaneous Items:</strong></td>
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<td>551.00 CY</td>
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<td><strong>Total Price for above Erosion Control &amp; Earthwork Items:</strong></td>
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</table>

5/7/2019 11:31:29 AM
The normal paving season extends from April to November 15, depending on weather conditions.

The sponsor accepting this quotation represents that it is the representative of the Owner of the premises on which the work is to be done, and that permission and authority are hereby granted to Connell to perform such work on the premises in accordance with the terms of this Agreement.

NOTE:Connell makes no warranties with respect to the work performed under this Agreement and all warranties, express or implied, including (without limitation) any warranties of merchantability and fitness for a particular purpose are disclaimed by Connell and waived by Buyer.

The sponsor accepting this quotation represents that it is the representative of the Owner of the premises on which the work is to be done, or that the signer is an authorized representative of the Owner, and that permission and authority are hereby granted to Connell to perform such work on the premises in accordance with the

Total Bid Price: $179,653.00
terms and conditions of this Agreement.

14. INDEMNIFICATION/LIABILITY LIMITATION: Connell shall not be responsible for sponsor’s acts or omissions, or those of any other person or entity. Sponsor shall indemnify and hold Connell harmless from and against all claims, demands, suits, liabilities, losses and expenses (including reasonable attorneys fees) arising from or relating to any act or omission of sponsor, sponsor’s agents, or any third party. In no event shall Connell be liable for any consequential, incidental, special, punitive or indirect losses or damages which the sponsor may incur or suffer in connection with this Agreement.

15. BINDING EFFECT: This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

16. HAZARDOUS MATERIALS: In the event Connell encounters on the job site hazardous chemicals, wastes, or material as defined by any federal, state, or local authority (referred to as “Hazardous Materials”) which are not introduced to the job-site by Connell, Connell shall not have any duty or responsibility for handling, storage, or disposal of such Hazardous Materials, or for complying with any federal, state, or local laws, regulations or ordinances pertaining to the handling, storage, or disposal of the Hazardous Materials. Connell shall not be required to perform further work in the vicinity of the Hazardous Materials to the extent such Materials may, in Connell’s sole opinion, pose any threat to the health and safety of Connell personnel. Any delays in the performance of Connell’s work related to or caused by the presence of Hazardous Materials on the job-site will extend Connell’s time for performance under this Agreement a like amount of the time.

---

ACCEPTED:
The above prices, specifications and conditions are satisfactory and hereby accepted.

Buyer: ________________________________
Signature: ________________________________
Date of Acceptance: ________________________________

CONFIRMED:
Connell Resources, Inc.

Authorized Signature: ________________________________
Estimator: Shane Westlind
970-223-3151 swestlind@connellresources.com
EXHIBIT B
PLANS AND SPECIFICATION

To be provided by JST, Inc.

Plans

Rendezvous Access Road
Sheets 1-11
Dated: February 2019
By: JST, Inc.
EXHIBIT C
GENERAL CONDITIONS

1. INTENT

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one (1) shall be as binding as if required by all.

2. EXECUTION OF CONTRACT

Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

3. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall: (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the Owner.

4. UNFORESEEN SITE CONDITIONS

Contractor shall promptly notify Owner in writing of any latent physical conditions differing materially from those indicated or referred to in the Contract Documents which could not have been discovered upon a reasonable inspection of the site, or conditions of an unusual nature which differ materially from those ordinarily found to exist and recognized in an area such as the site. Promptly thereafter, Owner shall obtain the necessary additional investigations and tests and furnish copies to Contractor. If Owner finds that the results of such investigations or tests indicate that there are latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by Contractor, a Change Order shall be issued incorporating the necessary revisions.

5. SUPERVISION AND CONSTRUCTION PROCEDURES

The Contractor shall supervise and direct the Work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.

6. WARRANTY

The Contractor warrants to the Owner that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.

7. TAXES

The Contractor shall pay sales, consumer, use and similar taxes that are legally required when the Contract is executed.
8. PERMITS AND FEES

The Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the work.

9. NOTICES

The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without notice to the Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the owner in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.

10. USE OF SITE

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the Owner.

11. CUTTING AND PATCHING

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

12. CLEANING UP

The Contractor shall perform daily clean up to keep the premises and surrounding area free from accumulation of debris and trash related to the Work.

13. TITLE

The Contractor warrants that title to all Work covered by an application for payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an application for payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor’s knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner’s interests.

14. CORRECTION OF WORK

The Owner recognizes that this is an emergency project, with the work being completed at a non-ideal time of year. As such, the Owner recognizes that it is not feasible to apply the standard warranty. The Contractor hereby warrants the Work for material and workmanship defects. If work is completed outside of standard asphalt paving temperatures than warranty is void. The Contractor shall promptly correct Work rejected by the Owner as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work. If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it and the Contractor shall reimburse the Owner for the cost of correction.

15. TESTS AND INSPECTIONS

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. If the Owner requires additional testing, the contractor shall perform these tests.
TO:            Town Council
FROM:          Matt Blakely
DATE OF MEETING:  May 28, 2019
TITLE / SUBJECT:  A Resolution Approving the Construction of the Old Town Temporary Interim Parking

DESCRIPTION
A Resolution Approving the Construction of the Old Town Temporary Interim Parking

SUMMARY
This action item is an immediate need for safety reasons and to help support local businesses. There has been a much higher than anticipated increase in parking needs in the Old Town area due to increased business activity. This increase in business activity is creating a situation where the public is parking in areas not designated as public parking. Specifically, there is a parcel south of the tracks that is private property that has been used with permission from the property owner for Old Town businesses and for Town events. The primary safety concern is the location of the parcel in relation to the railroad tracks. Individuals that park in this location cross the railroad tracks at random locations thereby creating a significant safety issue. The location of the interim parking lot is such that it utilizes Town owned property close to the Old Town businesses and can serve for Town events.

Connell Resources, Inc. has provided an estimate of $134,760.20 for the interim parking lot solution (addition of approximately 70 parking spaces) on the Town's owned property east of Kern Street and on the property formerly known as the Ruybal Property. The work includes grading and placement of road base (as an interim alternative until such time as the property is developed), installation of fencing to delineate parking bays and circulation, and installation of privacy fencing along the adjoining residential property line.

The plan also includes fencing along the Great Western railroad right of way. This portion is dependent upon approval and a use agreement with Great Western.
purpose of the additional fencing along the railroad is to increase safety by directing pedestrians to the Main Street crossing versus crossing at inappropriate locations. The fencing will also reduce parking within the railroad ROW and along the tracks. This fencing is intended to extend from Main Street to the former Ruybal Property on the north side of the tracks.

Staff is seeking Council authorization of all components including the funding associated with preparing and submitting applications to the railroad with this request, for a total Council Purchase Authorization of $160,000.

RECOMMENDATION
Staff recommends Council's approval of this resolution for the construction of the Old Town Interim Parking.

KEY POINTS
These improvements will provide much needed relief to parking impacts in Old Town as well as improve safety adjacent to the railroad tracks.

PUBLIC/REFERRAL COMMENTS
None

ADVANTAGES
• Provides improved overflow parking for events held in Old Town and businesses.
• Separation between the railroad and Old Town businesses.
• Directs pedestrians to cross the Great Western railroad tracks at a safer/more appropriate location.
• Reduces parking within and adjacent to the railroad ROW.

DISADVANTAGES
The parking portion is a temporary solution that will need to be removed and replaced in the future. The fencing between the railroad and Old Town businesses will remain.

FINANCIAL IMPLICATIONS
This item was not contemplated as part of the 2019 CIP. However, it is a necessary improvement to complete at this time for safety and to help accommodate upcoming Old Town events.

Staff is requesting $160,000 to complete these improvements and submit applications to the railroad.

Staff requested pricing from two contractors for this work. Both contractors have completed work for the Town and are on the Town's "select bidders" list and meet the
necessary qualifications. Connell Resources' estimate was slightly lower than the Coyote Ridge estimate; therefore, staff is recommending Connell Resources Inc. for this work.

RECOMMENDED MOTION
I move to approve the Resolution for the Old Town Interim Parking Construction Project.

ATTACHMENTS
1. Resolution
2. Draft Contractor Agreement
3. Connell Resources Inc. Cost Estimate
4. Town Council Purchase Authorization
TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 30, SERIES 2019

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF TIMNATH
APPROVING THE OLD TOWN INTERIM PARKING CONSTRUCTION

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 and incorporated herein as Exhibit A is the form of Contactor Agreement to be used to enter into agreement with Connell Resources Inc. (the “Contractor”) to provide construction improvements for the Old Town Interim Parking project to the town property located east of Kern Street and the property formerly known as the Ruybal Property; and,

WHEREAS, the completion of said improvements was not contemplated as part of the 2019 Capital Improvements Projects; however, these improvements are deemed necessary for citizen safety and to help accommodate upcoming Old Town events; and,

WHEREAS, the Town Council is authorizing the Town Manager to execute this Contractor Agreement on behalf of the Mayor and after review by the Town’s legal counsel; and

WHEREAS, the Town Council is familiar with the attached Contractor Agreement form and finds it to be in the best interest of the Town, its residents, and the general public.

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO:

Section 1. Approval
The construction of Old Town Interim Parking is hereby approved in substantially the Contractor Agreement 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

ATTEST:

________________________
Aaron Pearson, Mayor Pro Tem

________________________
Milissa Peters-Garcia, CMC
Town Clerk
EXHIBIT A

Contractor Agreement Between Town of Timnath and Connell Resources Inc.
CONTRACTOR AGREEMENT

OLD TOWN TEMPORARY INTERIM PARKING

This CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “Agreement”) is made this ____ day of May 2019, by and between THE TOWN OF TIMNATH, a home rule municipal corporation and political subdivision of the State of Colorado (the “Owner”), and Connell Resources Inc., a Colorado business (the “Contractor”).

The Owner and Contractor are referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

A. The Owner was organized pursuant to and in accordance with the provisions of Title 31 of the Colorado Revised Statutes to provide certain services within its corporate boundaries.

B. The Owner is authorized to contract for the provision of such services pursuant to § 31-15-101, C.R.S., as amended.

C. Owner has contracted with TST Consulting Engineers Inc. (the “Owner’s Representative”), in part for construction management and oversight of the Work (as defined below), who will assume all duties, responsibilities and authorities assigned by the Owner to the Owner’s Representative or as provided for in the Contract Documents.

D. Contractor, an independent contractor, has received and examined the plans, specifications and terms of the contract for the Work (as defined below) and project described in this Agreement (the “Project”).

E. Contractor represents that it has the professional experience, skill and resources to perform the services, as set forth herein.

F. The Parties desire to enter into this Agreement, which represents the entire and integrated Agreement between the Parties and is intended to supersede all prior negotiations, representations and agreements between the Parties.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

A. Scope of Work/Notice to Proceed:

1. In General:

   a. Contractor agrees to provide those goods and services necessary to complete the work as described in the Scope of Work including the Bid Estimate set forth in attached Exhibit A and this Agreement (the “Work”) to be constructed in strict accordance with this Agreement, including any and all Plans and Specifications as set forth in Exhibit B, and the General Conditions attached as Exhibit C, which are incorporated herein by this reference (collectively, the “Contract Documents”).

   b. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in any Exhibit, the terms in the body of this Agreement shall govern.
c. The Work also includes those tasks, materials, equipment and services that are required to comply with applicable law, or necessary to obtain inspections and approvals, or reasonably implied or customarily furnished by a Contractor performing work as described in the Contract Documents.

d. Contractor shall direct its best efforts to complete the Work in accordance with the highest industry standards and shall comply with all material and reasonable requirements imposed by the Owner.

e. Contractor shall provide, at Contractor’s sole cost and expense, all labor, services, administrative support, equipment and materials (which, unless otherwise specified, shall be new), which are necessary to ensure that the Work is adequately completed under, or reasonably inferable from, the Contract Documents.

f. Contractor shall complete the Work in such a manner as to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees of Owner.

g. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the Owner in any manner whatsoever, except to the extent specifically provided in this Agreement.

2. Notice to Proceed:

The Contractor shall commence the Work upon execution of this Agreement by both Parties, which execution shall be deemed a Notice to Proceed for such Work.

B. Job Reports:

Contractor shall provide the Owner’s Representative, on a monthly basis (or more frequently upon the request of the Owner), on or before the end of each month, in a form satisfactory to the Owner, a narrative progress and status report describing Work in progress and results achieved during the reporting period, including a description of the Work performed during the invoice period and the Work anticipated to be performed during the ensuing invoice period.

C. Hazardous Materials:

Contractor hereby covenants and agrees that no person engaged, hired, or contracted by Contractor to provide services or to perform any portion of the Work under this Agreement will use, dispose of, store or be in possession of hazardous materials anywhere on the Project at any time, except with Owner’s prior knowledge and consent, and in strict compliance with applicable law.

D. Repairs:

The Contractor shall notify the Owner’s Representative immediately of any and all damage caused by the Contractor to the Owner’s property, and that of third persons. The Contractor will promptly repair or, at the Owner’s option, reimburse the Owner for the repair of any damage to property caused by the Contractor or its employees, agents, subcontractors or equipment.

E. Performance, Payment, and Warranty Bonds:

1. The Contractor shall, before commencing the Work, furnish to the Owner a performance, payment and warranty bond, in such form and written by such bonding company as shall be designated or approved in writing by the Owner, in the full amount of the Contract Price, including provisions for any adjustment of the Contract Price in accordance with the terms
of this Agreement, assuring the full, complete and timely performance of the Work by the 
Contractor, its agents, employees, servants and representatives, and warranting the 
workmanship and all materials used in the construction, installation and completion of the 
Work to be of good quality and constructed in a workmanlike manner in accordance with 
the standards, specifications, and requirements of the Contract Documents.

2. **Such performance bond shall expressly guarantee:**
   
a. Faithful performance of this Agreement and completion of the Work in complete 
   compliance with the Contract Documents.

b. Repair and replacement, if required, or payment of the costs of all defective 
equipment, materials and work performed on the Project or as provided under any 
guarantee, condition or other Contract Document for the full warranty and 
guarantee period.

c. Payment to all persons performing labor and furnishing materials, supplies, tools 
   and equipment in connection with the Project.

3. Contractor shall obtain such bonds on Owner’s behalf separate and apart from any similar 
bond or surety or warranty agreement entered into independently between the Owner and 
any manufacturer or supplier.

F. **Performance Standards:**

1. **The Contractor represents that it has or shall acquire the capacity and the professional** 
   experience and skill to perform the Work and that the Work shall be performed in accordance 
   with the standards of care, skill and diligence provided by competent professionals who 
   perform services of a similar nature to those specified in this Agreement. If competent 
   professionals find that the Contractor’s performance of the Work does not meet this standard, 
   the Contractor shall, at the Owner’s request, re-perform the Work not meeting this standard 
   without additional compensation.

2. **The services of the Contractor shall be undertaken and completed to assure their** 
   expeditious completion in light of the purposes of this Agreement. If performance of the 
   Work by the Contractor is delayed due to factors beyond the Contractor’s reasonable 
   control, or if conditions of the scope or type of services are expected to change, Contractor 
   shall give timely notice to the Owner’s Representative of such a delay or change and 
   receive an equitable adjustment of time and/or compensation, as negotiated between the 
   Parties.

3. **The Work provided under this Agreement shall be adequate and sufficient for the intended** 
   purposes and shall be completed in a good and workmanlike manner.

4. **All Work shall be performed in compliance with all applicable state, local and federal laws,** 
   statutes, codes, ordinances, executive orders and rules and regulations in effect when the 
   Work is complete.

5. **The responsibilities and obligations of the Contractor under this Agreement shall not be** 
   relieved or affected in any respect by the presence of any agent, consultant, sub-consultant 
   or employee of the Owner, including, but not limited to, the Owner’s Representative.

6. **Acceptance by the Owner of the Work or any documents performed or prepared by the** 
   Contractor by the Owner shall not relieve the Contractor of any responsibility for 
deficiencies, omissions or errors in said Work or documents.
7. The Owner shall provide the Contractor with all known information, conditions, standards, criteria, and objectives which affect the Work, and the Contractor shall be able to rely on such information.

8. The Owner shall provide the Contractor with reasonable access to any work sites necessary for completion of the Work, as the Owner is authorized to do so under applicable law.

G. **Contract Price:**

1. Contractor’s compensation for the Work shall be **$134,760.20** (the “Contract Price”). The Contract Price shall be a (check one):

   - [ ] Fixed Price
   - [X] Unit Price
   - [ ] Guaranteed Maximum Price
   - [ ] Other: ___________________

2. The Contract Price shall be paid pursuant to the payment terms set forth below.

3. Prior to commencing the Work, Contractor shall, if applicable, submit a proposed schedule of values to be used in processing pay applications.

4. Owner shall have the right to terminate this Agreement without liability if the Parties cannot agree upon the schedule of values.

5. The Contractor shall not be entitled to any additional compensation or reimbursement except as set forth in this Agreement.

H. **Applications for Payment:**

1. Progress Payments:
   a. Once per month on or before the 25th day of each month, Contractor shall invoice Owner for completed Work which has not been previously invoiced.
   b. Invoices shall be supported by such additional documentation as reasonably required by Owner or Owner’s Representative.
   c. The invoiced amount shall be based on the quantity of the work completed (if this Agreement is a unit price contract) or the percentage of the work completed (if this Agreement is a fixed fee/lump sum contract) during the period of time covered by the invoice, less retention.
   d. With each payment application, Contractor shall execute and submit Contractor’s form conditional lien waiver for itself and obtain and submit the same from all of its vendors, subcontractors, suppliers and materialmen, waiving lien rights for Work performed through the period covered by the application.
   e. Each new payment application shall be accompanied by unconditional lien waivers signed by Contractor and all vendors, subcontractors, suppliers and materialmen applicable for payments previously issued by Owner.
f. Payment will not be made for materials or equipment stored at the Project but not yet incorporated into the Work without the prior authorization of Owner and proof satisfactory to Owner that the materials and equipment are insured for loss.

g. Payment shall not alter Contractor’s responsibility for loss or damage which occurs prior to final acceptance by Owner of the completed Work.

2. Approval/Disapproval of Application for Payment:
   a. Owner or Owner’s Representative shall promptly review each complete payment application to determine Contractor’s entitlement to payment. The approved portion of the invoiced amount shall be paid to Contractor within 30 days of approval of the payment application by Owner or Owner’s Representative.
   b. If disapproved, Owner or Owner’s Representative shall return the application to Contractor with a written explanation of the disapproval, and Contractor shall make the necessary corrections and resubmit to Owner or Owner’s Representative.
   c. Payments by Owner, including final payment, shall not constitute approval or final acceptance of the Work or any item of cost.
   d. Owner shall have the right at any time to pay Contractor by issuance of joint checks made payable to Contractor and Contractor’s vendors, subcontractors, suppliers and materialmen.

3. Retention:
   a. If Contractor is satisfactorily performing this Agreement, progress payments shall be in an amount equal to 95% of the calculated value of any Work completed, less the aggregate of payments previously made, until all of the Work required by this Agreement has been performed.
   b. If, in the opinion of Owner, satisfactory progress is not being made on the Work, or if a claim is filed under § 38-26-107, C.R.S., Owner may retain such additional amounts as may be deemed reasonably necessary by Owner to assure completion of the Work or to pay such claims and any engineer’s and attorney’s fees reasonably incurred or to be incurred by Owner in defending or handling such claims.
   c. The withheld percentage of the Agreement Price shall be retained until this Agreement is completed satisfactorily and the Project is finally accepted by Owner in accordance with the provisions of this Agreement.
   d. Progress payments shall not constitute final acceptance of the Work.
   e. The Owner shall make a final settlement in accordance with § 38-26-107, C.R.S., within 60 days after this Agreement is completed satisfactorily and finally accepted by the Owner.

4. Withholding of Payment:
   a. Owner may withhold payments for any of the following reasons:
      1) Omitted Work, or defective Work that has not been remedied.
2) Mechanic’s liens filed, or reasonable evidence indicating that liens will be filed, by Contractor or its suppliers or Contractors, in which case the Owner may withhold 150% of the lien claim.

3) Contractor’s failure to properly make payments to others.

4) Owner’s reasonable doubt that the Work can be completed for the balance of the unpaid Contract Price

5) The Work is behind schedule or there are reasonable indications that the Work will not be completed on schedule.

6) Any damage to the work of a subcontractor caused by or attributable to Contractor.

7) Any dispute between Contractor and any subcontractor or contractor employed by Owner or Contractor on the Project.

8) Contractor’s failure to submit adequate proof of the insurance coverage required by this Agreement.

b. Whenever the grounds for withholding have been removed, Owner shall pay the amount withheld within 15 days, less any expenses incurred, or damages sustained by Owner.

c. Although not required to do so, Owner may directly pay any of Contractor’s laborers, subcontractors or materialmen. Such payments shall be deemed payment to Contractor and shall be credited against the Contract Price, and any amount by which such payments exceed the Contract Price then due shall be immediately reimbursed by Contractor.

d. The rights to withhold payment shall be in addition to all other rights and remedies of Owner.

5. Conditions to Final Payment:

a. Upon completion of the Work and written notice to Owner, Owner or Owner’s Representative shall inspect the Work and may reject any portion not in conformity with the Contract Documents.

b. Defective materials, equipment or work shall be remedied immediately by Contractor before final payment.

c. Owner shall have the right to determine the acceptability of Contractor’s performance and conformance with the Contract Documents, which determination shall be conclusive and binding upon Contractor.


d. Final acceptance by Owner is subject to the provisions of this Agreement and in no manner affects or releases any warranty or guarantee with Contractor or manufacturers of equipment.

e. The Work shall not be considered for “Final Acceptance” until all of the following have occurred:

1) Owner or Owner’s Representative has inspected the Work with Contractor and any and all “punch list” items have been completed.
2) Owner has received from Contractor:
   a) A complete list of all subcontractors and suppliers including address, telephone numbers and contact persons.
   b) All operation and maintenance manuals
   c) Any and all written guarantees from manufacturers, suppliers, or subcontractors.
   d) All as-built records and plans.

f. There are no known undischarged obligations, liens, attachments or claims in connection with the Work, and Owner has received lien waivers, releases and such other evidence of full payment to all vendors, subcontractors, suppliers and materialmen.

g. Owner has obtained all necessary written consents from any and all sureties providing bonds under this Agreement.

6. Final Application for Payment:
   a. Upon Owner’s Final Acceptance of the Work as specified in this Agreement, the Contractor shall submit to Owner its “Final Application for Payment.”
   b. The Final Application for Payment shall not be processed for payment by Owner unless it is accompanied by original lien releases executed by Contractor and all vendors, subcontractors, suppliers and materialmen, equal to the total amount claimed by Contractor to be due under this Agreement.
   c. Contractor shall also submit an affidavit that all payrolls, bills for materials and equipment and other indebtedness have been paid or otherwise satisfied in full and indemnifying Owner against such liability.

7. Payment:
   a. Upon publication of notice of final settlement pursuant to § 38-26-107, C.R.S. and approval of the Final Application for Payment, Owner shall pay Contractor within 30 days the approved portion of the Final Application for Payment, less 150% of any disputed amounts.
   b. Contractor’s acceptance of final payment shall constitute its waiver of any and all claims arising out of or any way related to this Agreement.
   c. The making of final payment to Contractor shall not constitute a waiver of any claims by Owner.

8. Appropriations Statement:
   In compliance with § 24-91-103.6, C.R.S., the following statements are included in this Agreement:
   a. The Owner has budgeted and appropriated an amount of money equal to or in excess of the Contract Price for the Work to be performed under this Agreement.
b. The Owner is prohibited from issuing any change order or other form of order or directive requiring additional compensable work to be performed by the Contractor, if such directive causes the aggregate compensation amount under the Agreement to exceed the amount appropriated for the original Agreement, unless the Contractor is given written assurance by the Owner that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in the Contract.

c. “Remedy-granting provision” means any contract clause which permits additional compensation in the event that a specific contingency or event occurs.

d. Such term shall include, but is not limited to, change clauses, differing site conditions clauses, variations in quantities clauses and termination for convenience clauses.

I. Completion Date / Contract Time

1. Time is of the essence in completing the Work. Contractor shall perform its Work to meet the Owner’s schedule with a substantial completion date of July 26, 2019 with final completion of the Work occurring on or before August 08, 2019.

2. If Owner determines the Contractor is not complying with the schedule, Contractor shall provide, at Contractor’s cost, any additional worker hours, labor, equipment and material necessary to comply with the project schedule.

J. Contractor Is Independent Contractor:

1. The Parties acknowledge and agree that, in performing the Work, Contractor, its employees and agents are independent contractors and are not acting as, nor are to be deemed or considered to be, agents, employees, joint venturers or partners of Owner.

2. The Contractor shall have full power and authority to select the means, manner and method of performing its duties under this Agreement, without detailed control or direction from the Owner, and shall be responsible for supervising its own agents, employees or subcontractors.

3. The Owner is concerned only with the results to be obtained.

4. The Owner shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state or federal income or other tax contributions, insurance contributions (e.g. FICA taxes), workers’ compensation, disability, injury, health or life insurance, professional liability insurance, errors and omissions insurance, vacation or sick-time benefits, retirement account contributions, or any other form of taxes, benefits or insurance.

5. The Contractor shall be responsible for its safety, the safety of its employees, the public and the work site in general, and shall comply with all applicable provisions of local, state and federal laws, regulations and orders affecting safety and health, including but not limited to the Occupational Safety and Health Act of 1970 (“OHSA”).
6. Contractor is solely responsible for the payment to its employees of all wages and other compensation, and for withholding of appropriate taxes and any and all benefits, and for strict compliance with all laws, rules, ordinances and regulations concerning employer/employee relationships and the Work, including, without limitation, worker’s compensation insurance laws.

K. Contractor’s Representations and Warranties:

1. Contractor represents and warrants to Owner that Contractor is skilled, properly licensed and qualified for the Project, and experienced in all aspects of providing or contracting for the performance of the Work.

2. Contractor shall supply an adequate number of employees who have been trained, qualified and are competent to perform the Work, and shall provide qualified on-site supervision at all times when Work is being performed at the Project.

L. Quality of Materials and Services:

1. No substitutions of material from those specified in the Contract Documents shall be permitted unless approved in writing by Owner or Owner’s Representative.

2. Owner reserves the right to inspect the Work at any time, and Contractor hereby agrees to comply with all reasonable requests by Owner to prove Contractor’s compliance with the requirements of the Contract Documents, and to correct Work not conformed to the requirements of the Contract Documents, at Contractor’s sole cost and expense.

M. Changes in the Work:

1. Owner shall have the right to modify the Work, order extra services of Contractor, delete portions of the Work or make changes in the Work or the Plans and Specifications, and Contractor shall be bound to perform the Work as modified by Owner’s or directions.

2. Contractor’s compensation shall be adjusted by equitable additions or deductions to account for increases or decreases in the Work, as modified.

3. Owner shall submit a written change order request for each such change which, when issued and signed by Owner and Contractor, shall constitute an amendment to this Agreement (“Change Order”).

4. Contractor shall not perform any increase in the cost or scope of the Work without Owner’s prior written authorization.

5. No change, alteration, or deviation shall be made, and no claim for additional compensation shall be valid unless supported by an executed, written Change Order.

N. Prevention of Liens:

1. Contractor shall pay when due all claims asserted by, and debts in favor of, persons or entities who furnish labor, material, services, fixtures or equipment applied to or utilized in the performance of the Work.

2. Contractor shall prevent the recordation of any claim of lien upon the Project and the garnishment or attachment of funds held by Contractor or others by promptly satisfying all claims and debts in connection with the Work which are or may be asserted against the Project, Owner or Contractor.
3. In addition, Contractor shall use all possible means to cause:
   a. The release of all claims for payment; and,
   b. The dismissal of all suits against the Project, Owner or Contractor, which have arisen as a result of the performance of the Work or other activities or obligations of Contractor under this Agreement.

4. Contractor shall deliver to Owner acceptable proof of such release or dismissal within 5 days after Owner’s written demand.

5. If Contractor fails to obtain release or dismissal within 5 days after demand, then in addition to other remedies, Owner shall have the right (but not the obligation) to use reasonable means to cause said claim or lien to be paid, rescinded, discharged, compromised, dismissed or removed including, without limitation, posting of a bond to cause the removal of such lien.

6. Upon Owner’s demand, Contractor shall promptly reimburse all costs incurred by Owner in paying or discharging such lien and/or claim including, without limitation, attorneys’ fees and bond premiums, which payment shall not be reimbursable to Contractor or increase the Contract Price.

O. **Insurance:**

1. Contractor and its subcontractors shall obtain and maintain, at their sole cost and expense, during the entire term of this Agreement, Colorado statutory workers’ compensation insurance coverage, comprehensive commercial general liability insurance coverage, and commercial automobile liability insurance coverage in the minimum amounts set forth in Exhibit D attached hereto and incorporated herein by this reference.
   a. Contractor shall supply Owner with complying certificates of insurance and copies of insurance policies prior to commencing any Work.
   b. Contractor and its subcontractors shall maintain the required insurance coverage throughout the term of this Agreement.
   c. A waiver of subrogation and rights of recovery against the Owner, its directors, officers, employees and agents is required for each coverage provided.
   d. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the Owner and its respective managers, members, officers, directors, partners and employees, as additional insured.
   e. All coverage provided pursuant to this Paragraph shall be written as primary policies, not contributing with and not supplemental to any coverage that the Owner may carry, and any insurance maintained by the Owner shall be considered excess.
   f. The Owner shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein.

2. Any such policy of insurance obtained to comply with this section shall provide that Owner shall receive 30 days written notice prior to the cancellation of any such policy.
   a. Contractor shall also provide the Owner with 30 days written notice prior to the material modification of such policy.
3. Contractor’s failure to purchase and maintain the required insurance shall not serve to release it from any obligations contained herein; nor shall the purchase or maintaining of the required insurance serve to limit Contractor’s liability under any provision herein. Contractor shall be responsible for the payment of any deductibles on issued policies.

4. The Contractor shall report in writing to the Owner all accidents whatsoever arising out of or in connection with the Work hereunder which result in injuries or property damage, giving full details and statements of witnesses. In addition, if any claim is made by a third person against the Contractor on account of any accident resulting or alleged to have resulted out of the performance of the Work, the Contractor shall immediately notify the Owner in writing.

P. Indemnification:

1. All Work done at the Project site, or in preparing, storing, or delivering materials, tools, equipment or any other type of personal property, or in providing services for the Project, or any or all of them, to or for the Project, shall be at the sole risk of Contractor.

Contractor shall, to the fullest extent permitted by law, defend all claims through legal counsel acceptable to Owner, and indemnify and hold harmless Owner and its directors, officers, contractors, employees, agents, representatives and consultants, and all of their respective successors and assigns, (collectively, the “Indemnities”) from and against any fines, penalties, losses, liabilities, damages, injuries, claims, demands, lawsuits, actions, expenses (including actual attorneys’ fees) and costs (collectively, “Claims”) whether incurred or made by any Indemnity or any third person, arising from or related to performance of any or all Work which is covered by or incidental to this Agreement, including without limitation:

a. Any defect in workmanship or materials included in the Work or other Work performed by or on behalf of Contractor, or Contractor’s employees, agents, subcontractors, suppliers, and any other persons present on the Project under Contractor’s supervision or control (collectively, “Contractor’s Representatives” or individually a “Contractor Representative”) or any surveys, specifications or designs completed by or at the request of Contractor or any of Contractor’s Representatives and utilized in the Work.

b. Any death or bodily injury to persons or damage to property involving Contractor or any of Contractor’s Representatives on the Project site or relating to the Project.

c. Any:
   1) Use or misuse by Contractor or any of Contractor’s Representatives of the Project site, the improvements thereon or any part thereof.
   2) Negligent act or failure to act, or any act which constitutes willful misconduct, by Contractor or any of Contractor’s Representatives.
   3) Violation or alleged violation by Contractor or any of Contractor’s Representatives of any law, ordinance, code, or regulation now or hereinafter enacted.

d. Contractor shall not be responsible to indemnify Owner or any Indemnity for the portion, if any, of any Claim found by a court of competent jurisdiction to have been caused solely by the negligence or willful misconduct of such Indemnity.
e. As applicable, the indemnification provisions of this Agreement are to be interpreted as compliant with the full scope of indemnification of Contractor allowed by § 13-21-111.5, C.R.S., and to the extent necessary shall be deemed modified by the Parties as needed to comply.

2. Such indemnity is intended to apply during the period of this Agreement and its performance, and shall survive the expiration or termination of this Agreement until such later time as action on account of any matter covered by such indemnity is barred by any applicable statute of limitations, or such date as any claim or action for which indemnification may be claimed is fully and finally resolved and, if applicable, any compromise thereof or judgment or award thereon is paid in full by Contractor, and Owner or the applicable Indemnitee is reimbursed by Contractor for any amounts paid in compromise thereof or upon a judgment or award thereon and in defense of such action or claim, including actual attorneys’ fees.

3. Contractor hereby agrees to indemnify, defend and hold the Project, Owner and Owner’s Indemnitees harmless from and against any and all liens and charges of every type, nature, kind or description, for which Contractor has received payment, which may at any time be filed or claimed against the Project, or any portion thereof, or the improvements situated thereon as a consequence, direct or indirect, of any act or omission of Contractor or its agents, servants, employees, suppliers, subcontractors, and all costs, including attorneys’ fees, incurred as a result of the claim of any such lien.

Q. Compliance with Laws and Contractor’s Safety Regulations:

1. Contractor shall, at its own expense, protect its employees and all other persons on or about the Project site from risk of death, injury or bodily harm arising out of or in any way related to the Work or the acts or omissions of Contractor and all of Contractor’s Representatives.

2. Contractor shall fully comply with all laws, ordinances, orders, codes, citations, rules, regulations, and standards concerning occupational health and safety, accident prevention, safety equipment and OSHA regulations.

3. Contractor shall conduct inspections to ensure that safe working conditions and all necessary or appropriate safety equipment exist at the Project site and accepts sole responsibility for providing a safe place to work for its employees and for the employees of its subcontractors and suppliers.

4. Contractor shall indemnify, protect, defend and hold Owner and its Indemnitees harmless from any liabilities, losses, costs, damages or expenses, including attorneys’ fees and costs, which such parties may incur as a result of any claims, causes of action, citations or work stoppages arising out of or in any way related to the alleged violation by Contractor or any Contractor Representative, of any such safety law, ordinance, order, code, citation, rule, regulation, or standard.

R. Default:

1. Owner may give written notice of grounds for default to Contractor at any time if:
   a. Contractor fails to perform in an adequate or specified manner or proceeds in willful violation of the Contract Documents or terms of this Agreement
   b. Performance of the Work is being delayed unnecessarily or Contractor is executing its responsibilities in bad faith or contrary to the intent of this Agreement.
c. Performance is not fully completed within the period of time specified in the Contract Documents.

d. Work to be performed by Contractor is assigned without Owner’s consent.

e. Contractor is insolvent or files for bankruptcy.

f. Contractor makes a general assignment of assets for the benefit of creditors.

g. A receiver is appointed for Contractor.

h. Other serious and reasonable cause exists which jeopardizes completion of the Work.

2. If Contractor does not remedy or otherwise correct the grounds for default within such period of time as specified by Owner, Owner may terminate this Agreement and direct Contractor to discontinue any further work on the Project, and Contractor shall immediately stop all work on the Project.

3. Owner, in its discretion, may complete the Work, or may request the surety of Contractor to complete the Work, or may contract with others to complete the Work at the expense of Contractor and its surety.

4. Any reasonable increase in costs over the Contract Price and any special damages incurred by Owner as a consequence of such default, including reasonable attorneys’ fees, shall be paid and satisfied in full by Contractor and its surety.

5. Any monies due the Contractor based on work satisfactorily performed through the date of termination that were not otherwise expended in completing the Work shall be paid to the Contractor after all Work is completed.

S. Storm Water Compliance:

1. Contractor shall comply with all applicable laws and regulations regarding storm water mitigation.

2. Contractor shall implement the Best Management Practices (“BMPs”) for any Work that it performs on the Project.

3. Owner shall be entitled to recover from Contractor all fines, fees, expenses and other penalties assessed by any governmental body because of Contractor’s alleged violations of a permit or its obligations under this Agreement.

T. Contractor’s Warranty:

1. The Contractor shall and does by this Agreement guarantee and warrant that all Work furnished, installed, or performed will be of good quality and new, unless otherwise required or permitted by the Agreement.

a. The Contractor further warrants that the Work will conform to all requirements of the Agreement and the applicable building code and all other applicable laws, ordinances, codes, rules and regulations of any governmental authorities having jurisdiction over the Work.
b. All materials are subject to the satisfaction and acceptance of the Owner, but payments for the completed Work will not constitute final acceptance nor discharge the obligation of the Contractor to correct defects at a later date.

c. Such warranties set forth in the Agreement are in addition to, and not in lieu of, any other warranties prescribed by Colorado law.

2. The Contractor hereby warrants the Work for a period of 1 year from the date of completion and initial acceptance of the Work.

a. The Contractor will immediately correct or replace any Work that is defective or not conforming to the Agreement at its sole expense to the reasonable satisfaction of the Owner.

b. The Contractor’s guarantees and warranties shall in all cases survive termination of this Agreement.

c. This warranty shall be enforceable by the Owner, its successors and assigns.

d. Prior to final payment for any services involving Work, and at any time thereafter but before the final inspection, as set forth below, the Contractor and the Owner shall, at the request of the Owner, conduct an inspection of the Work for the purpose of determining whether any Work is defective or otherwise not in conformance with the Agreement.

e. The Contractor’s fees and costs associated with the inspection shall be included in the compensation schedule set forth Section 6 of this Agreement and shall not be billed separately to the Owner.

f. In the event the Contractor neglects to include the fees and costs associated with the inspection in the compensation schedule set forth Section 6 of this Agreement, the Contractor is deemed to have waived these fees and costs.

g. After completion of the inspection, the Owner will provide the Contractor with written notice of any Work requiring corrective action.

h. The Contractor agrees to correct or replace the defective Work within a reasonable time, as agreed to by the Parties, but in no event later than 30 calendar days from the date of notice from the Owner, unless otherwise agreed to by the Owner.

3. The Contractor agrees that if warranty issues appear before payment has been made under this Agreement, the Owner may withhold payment until such warranty issues are resolved to the Owner’s satisfaction.

If repair or replacement of any warranty or defective Work is not made by the Contractor promptly upon request by the Owner as set forth in this Agreement, in addition to any other remedy, the Owner may withhold any payment the Owner may owe to the Contractor, including payments under other contracts or agreements related or unrelated to the Work.

4. The Contractor shall promptly notify the Owner of any Work, whether by the Contractor, its subcontractors or any third parties, which the Contractor believes to be defective or not conforming with the Agreement.
5. The Contractor shall, at its expense, obtain all permits, licenses and other consents required from all governmental authorities, utility companies and appropriate parties under any restrictive covenants in connection with the Work. The Contractor shall comply with all of the terms and conditions of all permits, licenses and consents.

6. At or around 11 months, but no more than 1 year, after the completion and acceptance of the Work, the Contractor and the Owner shall, at the request of the Owner, conduct a final inspection of the Work for the purpose of determining whether any Work is defective or otherwise not in conformance with the Agreement.

   a. The Contractor’s fees and costs associated with the inspection shall be included in the compensation schedule set forth in Section 6 of this Agreement and shall not be billed separately to the Owner.

   b. In the event the Contractor neglects to include the fees and costs associated with the inspection in the compensation schedule set forth in Section 6 of this Agreement, the Contractor is deemed to have waived these fees and costs.

   c. After completion of the final inspection, the Owner will provide the Contractor with written notice of any Work requiring corrective action.

   d. In the event the Contractor does not correct or replace the defective Work within 30 calendar days from the date of notice from the Owner, or within such other reasonable time as agreed to by the Parties, the Owner may correct or replace the defective Work and the Contractor shall reimburse the Owner for the related costs and fees.

U. Contractor Records:

   1. All documents produced by or on behalf of the Contractor prepared pursuant to this Agreement, including, but not limited to, all maps, plans, drawings, specifications, reports, electronic files and other documents, in whatever form, shall remain the property of the Owner under all circumstances, upon payment to the Contractor of the invoices representing the Work by which such materials were produced.

   2. The Contractor shall maintain electronic and reproducible copies on file of any such instruments involved in the Work, shall make them available for the Owner’s use, and shall provide such copies to the Owner upon request.

   3. Upon request of Owner, Contractor shall supply Owner with a list of the names, addresses and telephone numbers of all persons providing materials, labor or services to the Project on behalf of Contractor.

V. Termination:

   1. Owner may terminate this Agreement at any time, with or without cause, by giving Contractor not less than 15 days’ prior written notice of its election to terminate.

   2. In addition, Owner may terminate this Agreement upon 72 hours prior written notice:

      a. For just cause; or,

      b. In the event of a sale, condemnation or destruction of all or any portion of the Project.
3. Termination shall not affect Contractor’s right to fees earned for that portion of the Work performed through the effective date of termination, which shall be paid in the ordinary course of business.

4. In the absence of any contrary instructions, Contractor shall place no further orders or subcontracts, terminate all orders and subcontracts to the extent they relate to terminated Work, and stop work on the date and to the extent specified in the notice.

5. Contractor shall cooperate with Owner to transfer all of Contractor’s rights and interests in any orders, subcontracts, or work, as directed by Owner.

6. Owner may also terminate this Agreement to the extent permitted or required by § 8-17.5-101, et seq., C.R.S., without liability to Owner.

W. Right of Offset and Damages:

If Contractor breaches any covenant or obligation of this Agreement, in addition to other remedies:

1. Owner shall be entitled to offset and deduct any costs, expenses or damages incurred by Owner as a result of such breach, including liquidated damages against any amounts otherwise due to Contractor hereunder; and,

2. Should Contractor fail to commence and diligently pursue the cure of its breach and the correction of all deficiencies in its performance within 72 hours of written demand from Owner, Owner shall be entitled to complete any portion of the Work not fully completed or correct any portion of the Work not conforming to this Agreement, using its own forces or other contractors, and shall be entitled recover from Contractor through back charges or otherwise the entire cost thereof, together with Contractor’s reasonable overhead and profit.

X. Assignment:

1. Contractor shall not assign or transfer this Agreement, or any obligation imposed by this Agreement.

2. Contractor shall subcontract only with subcontractors approved by Owner.

3. Contractor shall not assign, anticipate, or hypothecate Contractor’s right to payment under this Agreement to any other person.

4. Any attempted assignment shall be void and of no effect.

Y. Cooperation:

Owner reserves the right to enter into contracts and agreements for other work at the Project and Contractor agrees to cooperate and coordinate with all other contractors.

Z. Compliance with Laws:

Contractor shall at all times use due care in the performance of the Work on the Project and fulfillment of its obligations under this Agreement, and shall observe and adhere to all applicable laws, rules, regulations and ordinances promulgated by Owner from time to time and by any regulatory bodies having jurisdiction over the Project including, without limitation, obtaining required permits, inspections and approvals, and compliance with all requirements relating to hazardous materials.
AA. Protection of Project:

Contractor shall be responsible for protecting finished Work, Work in progress, materials, equipment and supplies, whether the property of Owner, Contractor, or supplied by Contractor or Owner, from harm, loss, injury, and/or damages from any cause whatsoever, until final acceptance of the Work, or termination of this Agreement, whichever shall occur first.

BB. Licenses and Permits:

Contractor represents and warrants that Contractor has obtained all licenses and permits required by law to provide and complete the Work.

CC. Governing Law:

1. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Colorado, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado.

2. Venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the Project is located.

3. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including, but not limited to, forum non-conveniens or otherwise.

4. At the Owner’s request, the Contractor shall carry on its duties and obligations under this Agreement during any legal proceedings and the Owner shall continue to pay for the Work performed under this Agreement until and unless this Agreement is otherwise terminated.

5. In the event of any litigation between the Owner and the Contractor to enforce any provision of this Agreement or any right of either party hereto, the parties agree that the court shall award costs and expenses to the prevailing party, such costs and expenses to include reasonable attorneys’ fees.

6. Otherwise, each party shall pay its own costs and fees for litigation.

7. At the Owner’s request, the Contractor will consent to being joined in litigation between the Owner and third parties, but such consent shall not be construed as an admission of fault or liability.

8. The Contractor shall not be responsible for delays in the performance of the Work caused by factors beyond its reasonable control including delays caused by Act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner or failure of the Owner to furnish timely information or to approve or disapprove of Contractor’s Work in a timely manner.

DD. No Waiver:

The waiver by either Party of a breach by the other of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision.
EE. Severability:
1. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement, which shall remain in full force and effect.
2. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

FF. Entire Agreement:
1. This Agreement, its exhibits and matters incorporated by reference, together with all applicable law, constitutes the entire agreement between the Parties hereto with respect to the matters covered thereby and supersedes all prior negotiations, representations and agreements with respect to the matters covered in this Agreement.
2. This Agreement may only be modified or amended by a document executed by all Parties hereto.

GG. Notices:
All notices, demands and communications (collectively, “Notices”) under this Agreement shall be delivered or sent by:
1. First-class, registered or certified mail, postage prepaid, return receipt requested.
2. Nationally recognized overnight carrier addressed to the address of the intended recipient set forth below or such other address as either party may designate by notice pursuant to this Paragraph.
3. Sent by confirmed facsimile transmission, PDF or email.
4. Notices shall be deemed given either 1 business day after delivery to the overnight carrier, 3 days after being mailed as provided in clause (1) above, or upon confirmed delivery as provided in clause (3) above.

Owner: TOWN OF TIMNATH
Attn: Town Manager
4800 Goodman Street
Timnath, CO 80547
(970) 224-3211 (phone)
(970) 224-3217 (fax)

With copy to: WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122
Attention: Robert G. Rogers, Esq.
(303) 858-1800 (phone)
(303) 858-1801 (fax)
rrogers@wbape.com
HH. Governmental Immunity:

Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Owner, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the Owner and, in particular, governmental immunity afforded or available to the Owner pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, et seq., C.R.S.

II. Negotiated Provisions:

This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed substantially and materially to the preparation of this Agreement.

JJ. No Third-Party Beneficiaries:

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

KK. Equal Opportunity; Employment Eligibility:

1. This Agreement is subject to all applicable laws and executive orders relating to equal opportunity and non-discrimination in employment and the Contractor represents and warrants that it will not discriminate in its employment practices in violation of any such applicable law or executive order.

2. The Contractor hereby states that it does not knowingly employ or contract with illegal aliens and that the Contractor has participated in or has attempted to participate in the E-Verify Program (formerly known as the Basic Pilot Program) (as defined in § 8-17.5-101, C.R.S.) in order to verify that it does not employ any illegal aliens. The Contractor affirmatively makes the follow declarations:

a. The Contractor shall not knowingly employ or contract with an illegal alien who will perform work under the public contract for services contemplated herein and will participate in the E-Verify Program or Department Program (as defined in § 8-17.5-101, C.R.S.) in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services contemplated herein.
b. The Contractor shall not knowingly enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform the services contemplated herein.

c. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.

d. The Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

e. If the Contractor obtains actual knowledge that a subcontractor performing the services under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to:

f. Notify the subcontractor and Owner within 3 days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien.

g. Terminate the subcontract with the subcontractor if within 3 days of receiving the notice required above the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

h. The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that such Department is undertaking pursuant to the authority established in §8-17.5-102, C.R.S.

i. If the Contractor violates a provision of the Agreement pursuant to §8-17.5-102, C.R.S., Owner may terminate the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the Owner.

II. Subject to Annual Appropriation and Budget:

1. Owner does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever.

2. The performance of those obligations of Owner hereunder requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations.

3. The Contractor expressly understands and agrees that Owner’s obligations hereunder shall extend only to monies appropriated for the purposes of this Agreement by the Board and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year.

4. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by Owner, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of Owner or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado.
5. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Owner funds.

6. Owner’s obligations under this Agreement exist subject to annual budgeting and appropriations and shall remain subject to the same for the entire term of this Agreement.

MM. Tax Exempt Status:

1. The Owner is exempt from Colorado State sales and use taxes.

2. Accordingly, taxes from which the Owner is exempt shall not be included in any invoices submitted to the Owner.

3. The Owner shall, upon request, furnish Contractor with a copy of its certificate of tax exemption.

4. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase the materials tax free.

5. Pursuant to § 39-26-114(1)(a)(XIX)(A), C.R.S., Contractor and subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.

NN. Counterpart Execution:

1. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument.

2. Executed copies hereof may be delivered by facsimile or e-mail of an Adobe PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

OWNER:

THE TOWN OF TIMNATH, a home rule municipal corporation of the State of Colorado

ATTEST:

__________________________________________
Town Clerk
CONTRACTOR:
CONNELL RESOURCES INC.

Printed Name: ________________________________
Title: ______________________________________

STATE OF COLORADO

COUNTY OF ____________

The foregoing instrument was acknowledged before me this ___ day of May 2019, by
___________________________, as the __________________ of ____________________________.

WITNESS my hand and official seal.
My commission expires: ______________________.

(SEAL)

Notary Public

Contractor’s Signature Page to Contractor Agreement (Old Town Interim Parking), dated May ___, 2019
<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit A</td>
<td>Scope of Work</td>
</tr>
<tr>
<td>Exhibit B</td>
<td>Plans and Specifications</td>
</tr>
<tr>
<td>Exhibit C</td>
<td>General Conditions</td>
</tr>
<tr>
<td>Exhibit D</td>
<td>Insurance Requirements</td>
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</table>
EXHIBIT A

SCOPE OF WORK

Connell Resources Inc. (CONTRACTOR) will perform the following tasks as part of this scope of work, as detailed on the Budget with Terms form attached hereto:

It should be noted that this project is for a temporary solution for parking within Timnath and will need to be removed and replaced in the future.

Only minor grading is anticipated to complete the work.

The CONTRACTOR shall commence work no later than July 8, 2019 with final completion on or before August 8, 2019.

The CONTRACTOR shall complete the work outlined in this scope of work for a unit price of $134,760.20.
We have prepared for your information the following items for budget evaluation purposes for the referenced project. This budget includes conceptual quantities, resource costs, scope-of-work and schedules and therefore may not completely represent all items of work or cost ultimately necessary for completion of the project. This budget was prepared using reasonable skill and judgment, but is not an offer to perform the Work described.

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<tr>
<th>Item #</th>
<th>Item Description</th>
<th>Estimated Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
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<td>Wood Post And Cobra LED Light Fixture</td>
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**Total Price for above Area C Items:** **$36,420.45**

190321 Timnath - Old Town Parking Lot At Feed And Grain  Page 2 of 4
Total Price for above Area 2 Items: $11,825.00
Total Bid Price: $134,760.20

Notes:
- Budget pricing is based upon the preliminary plan set provided by The Town of Timnath / TST for the Feed and Grain overflow parking lot. No other information was provided by bid time.
- The following are excluded from this proposal: Construction engineering; Drainage facility certification; Warrantee period in excess of one year; Street cleaning for work performed by others; All permits & fees; Dewatering; Maintenance of erosion control devices for others; quality control or acceptance testing; prairie dog removal, relocation, or extermination; landscaping, new electrical meter or transformer installation, rail road insurance or permitting.
- Drainage less than 1.5% designed or obtainable fall will not be guaranteed.
- All work is contingent on the availability of construction water, access to the work, negotiation of acceptable contract terms, a mutually agreeable schedule, and verification of financing.
- Please provide a minimum of 4 weeks advanced notification of work requests to allow for scheduling the work. No work will be completed without a signed Contract Agreement. Work is anticipated.
- Frost removal or winter protection is not included. If requested, it will be billed either on a time and material basis or a lump sum amount that is mutually agreed upon.
- Environmental site assessment / mitigation of hazardous or contaminated materials is excluded. Treatment or testing for contaminated groundwater is specifically excluded.
- Add 1% to include performance and payment bond.
CONDITIONS AND AGREEMENTS

1. WITHDRAWAL OF QUOTATION: This quotation may be withdrawn or modified by Connell Resources, Inc. ("Connell") if not accepted by the named sponsor (the "Sponsor") within thirty (30) days from date of issue.

2. PERFORMANCE: Delivery of materials and performance of services herein quoted are subject to delays occasioned by circumstances beyond Connell’s control. Completion date is subject to weather conditions, mechanical failures, labor difficulties, fuel or material shortages, fire, government authority or regulation, acts of God, engineering changes, contractors not included in this Agreement or any cause beyond Connell’s control.

3. SPONSOR’S RESPONSIBILITIES: This quotation does not include any charges for tipping fees unless noted. Sponsor to furnish all easements and adequate working right of ways. Sponsor will pay all costs of design engineering and inspections and quality control testing.

4. SOIL, MECHANICS AND UNDERGROUND CONDITIONS: During excavation, if material is encountered that a 1-½ yard backhoe cannot remove for utility installation or a D8 tractor cannot rip for grading work, a price adjustment may be necessary. If blasting (or other approved method) becomes necessary, this work will be done as an additional cost on a time and material basis or a negotiated lump sum basis. Also, if unstable substrate conditions are encountered, these conditions shall be the criteria for change order negotiations between Sponsor and Connell.

5. DESIGN AND ENGINEERING SERVICES: Sponsor acknowledges that Connell is not providing professional design or engineering services. Sponsor is solely responsible for performing, or retaining qualified professionals to perform, all such services, at their cost. Connell shall not be liable for any damages resulting from design or engineering services performed by sponsor, sponsor’s agents or third parties.

6. EXTRA WORK: Upon written notice from Connell to the sponsor, sponsor’s agent or employee that extra work not specifically included in the quotation is necessary to complete the work described, the parties shall negotiate a written, signed agreement for the extra work within three (3) working days of the date of such notice. If such written agreement is not reached within three (3) working days and Connell has not otherwise received from the sponsor any written authorization for the extra work, then Connell may in its sole absolute discretion proceed with extra work if Connell considers it necessary. As compensation for the extra work, the sponsor shall pay Connell on a time-and-material basis for all costs related to such work unless the parties agree in writing on another method of compensation.

7. QUANTITY DETERMINATION AND BILLINGS: For any unit price quotation, the quantities shall be verified by in-field measurement after construction, and the total price to be paid by sponsor will be calculated by multiplying the verified quantities times the unit prices for such quantities. This quotation shall be considered a unit price quotation unless it is specifically designated as a lump-sum quotation.

8. PAYMENT TERMS: The sponsor agrees to pay Connell the full quoted price with any adjustments, provided for the work herein specified. Invoices or progress payments will be due on the 10th of each month following their issue. Payment shall be overdue and delinquent if not received by Connell by the due date. Time is of the essence to this Agreement. Connell will be entitled to a 1-1/2% per month LATE PAYMENT CHARGE, NOT A FINANCE CHARGE, which is an ANNUAL PERCENTAGE RATE OF 18%, on any past due balances. Acceptance by Connell of a partial payment shall not be construed as a waiver of Connell’s right to full and immediate payment.

9. DEFAULT: If sponsor defaults in timely making any payment or performing any obligation under this Agreement, sponsor shall pay all costs and expenses (including reasonable attorney’s fees) incurred by Connell as a result of the default.

10. WARRANTIES: All work shall be performed in a good workmanlike manner in accordance with the applicable ordinances and regulations of the City, County or District in which it is performed. All warranties will be as per the City, County or District in which the work is performed, as stated by their ordinances or regulations. EXCEPT AS PROVIDED ABOVE, CONNELL MAKES NO WARRANTIES WITH RESPECT TO THE WORK PERFORMED UNDER THIS AGREEMENT AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED BY CONNELL AND WAIVED BY BUYER.

11. SOIL STERILIZATION: If a soil sterilizer is applied it is done as an effort to retard weed growth and no guarantee is expressed or implied that its use will be effective.

12. ASPHALT PRICE ADJUSTMENTS: In the event of national and regional shortages of crude oil or other factors beyond Connell’s control, Connell’s suppliers will no longer furnish a long-term price for asphalt cement. If paving work is not performed during Connell’s current paving season, the price may be increased by Connell to reflect price increases in the following paving season when the work is completed. The normal paving season extends from April to November 15, depending on weather conditions.

13. AUTHORITY TO PERFORM WORK: The sponsor accepting this quotation represents that it is the representative of the Owner of the premises on which the work is to be done, or they have been authorized as an authorized representative of the Owner, and that permission and authority are hereby granted to Connell to perform such work on the premises in accordance with the terms and conditions of this Agreement.

14. INDEMNIFICATION/LIABILITY LIMITATION: Connell shall not be responsible for sponsor’s acts or omissions, or those of any other person or entity. Sponsor shall indemnify and hold Connell harmless from and against all claims, demands, suits, liabilities, losses and expenses (including reasonable attorneys fees) arising from or relating to any act or omission of sponsor, sponsor’s agents, or any third party. In no event shall Connell be liable for any consequential, incidental, punitive or indirect losses or damages which the sponsor may incur or suffer in connection with this Agreement.

15. BINDING EFFECT: This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

16. HAZARDOUS MATERIALS: In the event Connell encounters on the job site hazardous chemicals, wastes, or material as defined by any federal, state, or local authority (referred to as “Hazardous Materials”) which are not introduced to the job-site by Connell, Connell shall have no duty or responsibility for handling, storage, or disposal of such Hazardous Materials, or for complying with any federal, state, or local laws, regulations or ordinances pertaining to the handling, storage, or disposal of the Hazardous Materials. Connell shall not be required to perform further work in the vicinity of the Hazardous Materials to the extent such Materials may, in Connell’s sole opinion, pose any threat to the health and safety of Connell personnel. Any delays in the performance of Connell’s work related to or caused by the presence of Hazardous Materials on the job-site will extend Connell’s time for performance under this Agreement a like amount of the time.

See attached "Conditions And Agreement". This agreement is subject to the attached "Conditions and Agreement". By signing below, the parties are expressly agreeing to all terms, conditions, and agreements on this document and the attachments.

ACCEPTED:

The above prices, specifications and conditions are satisfactory and hereby accepted.

Sponsor:

Signature: ___________________________

Date of Acceptance: _______________

CONFIRMED:

Connell Resources, Inc.

Authorized Signature: ___________________________

Estimator: Shane Westlind

970-223-3151     swestlind@connellresources.com
EXHIBIT C
GENERAL CONDITIONS

1. INTENT

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor.

The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

2. EXECUTION OF CONTRACT

Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

3. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner.

Before commencing activities, the Contractor shall:

a. Take field measurements and verify field conditions.

b. Carefully compare this and other information known to the Contractor with the Contract Documents.

c. Promptly report errors, inconsistencies or omissions discovered to the Owner.

4. UNFORESEEN SITE CONDITIONS

Contractor shall promptly notify Owner in writing of any latent physical conditions differing materially from those indicated or referred to in the Contract Documents which could not have been discovered upon a reasonable inspection of the site, or conditions of an unusual nature which differ materially from those ordinarily found to exist and recognized in an area such as the site. Promptly thereafter, Owner shall obtain the necessary additional investigations and tests and furnish copies to Contractor. If Owner finds that the results of such investigations or tests indicate that there are latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by Contractor, a Change Order shall be issued incorporating the necessary revisions.

5. SUPERVISION AND CONSTRUCTION PROCEDURES

The Contractor shall supervise and direct the Work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.
6. WARRANTY

The Contractor warrants to the Owner that:

a. Materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents.

b. The Work will be free from defects not inherent in the quality required or permitted.

c. The Work will conform to the requirements of the Contract Documents.

7. TAXES

The Contractor shall pay sales, consumer, use and similar taxes that are legally required when the Contract is executed.

8. PERMITS AND FEES

The Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the work.

9. NOTICES

The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without notice to the Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the owner in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.

10. USE OF SITE

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the Owner.

11. CUTTING AND PATCHING

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

12. CLEANING UP

The Contractor shall perform daily clean up to keep the premises and surrounding area free from accumulation of debris and trash related to the Work.
13. **TITLE**

The Contractor warrants that title to all Work covered by an application for payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an application for payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor’s knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner’s interests.

14. **CORRECTION OF WORK**

The Contractor shall promptly correct Work rejected by the Owner as failing to conform to the requirements of the Contract Documents.

The Contractor shall bear the cost of correcting such rejected Work. In addition to the Contractor’s other obligations including warranties under the Contract, the Contractor shall, for a period of 1 year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents. If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it and the Contractor shall reimburse the Owner for the cost of correction.

15. **TESTS AND INSPECTIONS**

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. If the Owner requires additional testing, the contractor shall perform these tests.
EXHIBIT D

INSURANCE REQUIREMENTS

1. Standard Worker’s Compensation and Employer’s Liability Insurance covering all employees of Contractor involved with the performance of the Services, with policy amounts and coverage in compliance with the laws of the jurisdiction in which the Services will be performed.

2. Commercial General Liability Insurance with minimum limits of liability of not less than $2,000,000 per occurrence for bodily injury and property damage liability. Such insurance will include coverage for contractual liability, personal injury and broad form property damage. This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage. Coverage shall also include a Primary Not Contributory Coverage endorsement attached to the policy as a separate endorsement, and a waiver of subrogation endorsement in favor of the Owner, its directors, officers and employees also attached to the policy as a separate endorsement.

3. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than $1,000,000 combined single limit bodily injury and property damage. This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.

4. Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.
We have prepared for your information the following items for budget evaluation purposes for the referenced project. This budget includes conceptual quantities, resource costs, scope-of-work and schedules and therefore may not completely represent all items of work or cost ultimately necessary for completion of the project. This budget was prepared using reasonable skill and judgment, but is not an offer to perform the Work described.

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<th>Item #</th>
<th>Item Description</th>
<th>Estimated Quantity</th>
<th>Unit</th>
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<th>Total Price</th>
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<td><strong>Total Price for above A. General Conditions Items:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Area 2-60.000</td>
<td>Area 2 - Installation Of Railroad ROW Fencing Per Detail Provided</td>
<td>365.00</td>
<td>LF</td>
<td>$25.00</td>
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<td><strong>Total Price for above T. Fencing Items:</strong></td>
<td></td>
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<td>$9,125.00</td>
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</tbody>
</table>

**Total Price:** $42,723.25
Total Price for above Area 2 Items: $11,825.00
Total Bid Price: $134,760.20

Notes:
• Budget pricing is based upon the preliminary plan set provided by The Town of Timnath / TST for the Feed and Grain over flow parking lot. No other information was provided by bid time.
• The following are excluded from this proposal: Construction engineering; Drainage facility certification; Warrantee period in excess of one year; Street cleaning for work performed by others; All permits & fees; Dewatering; Maintenance of erosion control devices for others; quality control or acceptance testing; prairie dog removal, relocation, or extermination; landscaping, new electrical meter or transformer installation, rail road insurance or permitting.
• Drainage less than 1.5% designed or obtainable fall will not be guaranteed.
• All work is contingent on the availability of construction water, access to the work, negotiation of acceptable contract terms, a mutually agreeable schedule, and verification of financing.
• Please provide a minimum of 4 weeks advanced notification of work requests to allow for scheduling the work. No work will be completed without a signed Contract Agreement. Work is anticipated ________.
• Frost removal or winter protection is not included. If requested, it will be billed either on a time and material basis or a lump sum amount that is mutually agreed upon.
• Environmental site assessment / mitigation of hazardous or contaminated materials is excluded. Treatment or testing for contaminated groundwater is specifically excluded.
• Add 1% to include performance and payment bond.
CONDITIONS AND AGREEMENTS

1. WITHDRAWAL OF QUOTATION: This quotation may be withdrawn or modified by Connell Resources, Inc. ("Connell") if not accepted by the named sponsor (the "Sponsor") within thirty (30) days from date of issue.

2. PERFORMANCE: Delivery of materials and performance of services herein quoted are subject to delays occasioned by circumstances beyond Connell’s control. Completion date is subject to weather conditions, mechanical failures, labor difficulties, fuel or material shortages, fire, government authority or regulation, acts of God, engineering changes, contractors not included in this Agreement or any cause beyond Connell’s control.

3. SPONSOR’S RESPONSIBILITIES: This quotation does not include any charges for tapping fees unless noted. Sponsor to furnish all easements and adequate working right of ways. Sponsor will pay all costs of design engineering and inspections and quality control testing.

4. SOIL, MECHANICS AND UNDERGROUND CONDITIONS: During excavation, if material is encountered that a 1-¼ yard backhoe cannot remove for utility installation or a D8 tractor cannot rip for grading work, a price adjustment may be necessary. If blasting (or other approved method) becomes necessary, this work will be done as an additional cost on a time and material basis or a negotiated lump sum basis. Also, if unstable subgrade conditions are encountered, these conditions shall be the criteria for change order negotiations between Sponsor and Connell.

5. DESIGN AND ENGINEERING SERVICES: Sponsor acknowledges that Connell is not providing professional design or engineering services. Sponsor is solely responsible for performing, or retaining qualified professionals to perform, all such services, at their cost. Connell shall not be liable for any damages resulting from design or engineering services performed by sponsor, sponsor’s agents or third parties.

6. EXTRA WORK: Upon written notice from Connell to the sponsor, sponsor’s agent or employee that extra work not specifically included in the quotation is necessary to complete the work described, the parties shall negotiate a written, signed agreement for the extra work within three (3) working days of the date of such notice. If such written agreement is not reached within three (3) working days and Connell has not otherwise received from the sponsor any written authorization for the extra work, then Connell may in its sole absolute discretion proceed with extra work if Connell considers it necessary. As compensation for the extra work, the sponsor shall pay Connell on a time-and-material basis for all costs related to such work unless the parties agree in writing on another method of compensation.

7. QUANTITY DETERMINATION AND BILLINGS: For any unit price quotation, the quantities shall be verified by in-field measurement after construction, and the total price to be paid by sponsor shall be calculated by multiplying the verified quantities times the unit prices for such quantities. This quotation shall be considered a unit price quotation unless it is specifically designated as a lump-sum quotation.

8. PAYMENT TERMS: The sponsor agrees to pay Connell the full quoted price with any adjustments, provided for the work herein specified. Invoices or progress payments will be due on the 10th of each month following their issue. Payment shall be overdue and delinquent if not received by Connell by the due date. Time is of the essence to this Agreement. Connell will be entitled to a 1-1/2% per month LATE PAYMENT CHARGE, NOT A FINANCE CHARGE, which is an ANNUAL PERCENTAGE RATE OF 18%, on any past due balances. Acceptance by Connell of a partial payment shall not be construed as a waiver of Connell’s right to full and immediate payment.

9. DEFAULT: If sponsor defaults in timely making any payment or performing any obligation under this Agreement, sponsor shall pay all costs and expenses (including reasonable attorney’s fees) incurred by Connell as a result of the default.

10. WARRANTIES: All work shall be performed in a good and workmanlike manner in accordance with the applicable ordinances and regulations of the City, County or District in which it is performed. All warranties will be as per the City, County or District in which the work is performed, as stated by their ordinances or regulations. EXCEPT AS PROVIDED ABOVE, CONNELL MAKES NO WARRANTIES WITH RESPECT TO THE WORK PERFORMED UNDER THIS AGREEMENT AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED BY CONNELL AND WAIVED BY BUYER.

11. SOIL STERILIZATION: If a soil sterilizer is applied it is done as an effort to retard weed growth and no guarantee is expressed or implied that its use will be effective.

12. ASPHALT PRICE ADJUSTMENTS: In the event of national and regional shortages of crude oil or other factors beyond Connell’s control, Connell’s suppliers will no longer furnish a long-term price for asphalt cement. If paving work is not performed during Connell’s current paving season, the price may be increased by Connell to reflect price increases in the following paving season when the work is completed. The normal paving season extends from April to November 15, depending on weather conditions.

13. AUTHORITY TO PERFORM WORK: The sponsor accepting this quotation represents that it is the representative of the Owner of the premises on which the work is to be done, or they have been designated as an authorized representative of the Owner, and that permission and authority are hereby granted to Connell to perform such work on the premises in accordance with the terms and conditions of this Agreement.

14. INDEMNIFICATION/LIABILITY LIMITATION: Connell shall not be responsible for sponsor’s acts or omissions, or those of any other person or entity. Sponsor shall indemnify and hold Connell harmless from and against all claims, demands, suits, liabilities, losses and expenses (including reasonable attorneys fees) arising from or relating to any act or omission of sponsor, sponsor’s agents, or any third party. In no event shall Connell be liable for any consequential, incidental, punitive or indirect losses or damages which the sponsor may incur or suffer in connection with this Agreement.

15. BINDING EFFECT: This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

16. HAZARDOUS MATERIALS: In the event Connell encounters on the job site hazardous chemicals, wastes, or material as defined by any federal, state, or local authority (referred to as "Hazardous Materials") which are not introduced to the job-site by Connell, Connell shall have no duty or responsibility for handling, storage, or disposal or Hazardous Materials. Connell shall not be required to perform further work in the vicinity of the Hazardous Materials to the extent such Materials may, in Connell’s sole opinion, pose any threat to the health and safety of Connell personnel. Any delays in the performance of Connell’s work related to or caused by the presence of Hazardous Materials on the job-site will extend Connell’s time for performance under this Agreement a like amount of the time.

See attached "Conditions And Agreement". This agreement is subject to the attached "Conditions and Agreement". By signing below, the parties are expressly agreeing to all terms, conditions, and agreements on this document and the attachments.

ACCEPTED: Connell Resources, Inc.

Sponsor: 
Signature: ____________________________
Date of Acceptance: __________

CONFIRMED: 

Authorized Signature: ____________________________
Estimator: Shane Westlind
970-223-3151
swestlind@connellresources.com

190321 Timnath - Old Town Parking Lot At Feed And Grain  Page 4 of 4
Town of Timnath
4800 Goodman Street
Timnath, CO 80547
(970) 224-3211

Town Council Purchase Authorization

Date: May 28, 2019
Vendor: Connell Resources, Inc.
Department: Community Development
Project: Old Town Temporary Interim Parking

Description: Connell Resources, Inc. has provided an estimate of $134,760.20 for an interim parking lot solution (addition of approximately 70 parking spaces) on the Town’s owned property east of Kern Street and on the property formerly known as the Ruybal Property. The work includes grading and placement of road base (as an interim alternative until such time as the property is developed), installation of fencing to delineate parking bays and circulation, and installation of privacy fencing along the adjoining residential property line.

The plan also includes fencing along the Great Western railroad right of way. This portion is dependent upon approval and a use agreement with Great Western. The purpose of the additional fencing along the railroad is to increase safety by directing pedestrians to the Main Street crossing versus crossing at inappropriate locations. The fencing will also reduce parking within the railroad ROW and along the tracks. This fencing is intended to extend from Main Street to the former Ruybal Property on the north side of the tracks.

Staff is seeking Council authorization of all components including the funding associated with preparing and submitting applications to the railroad with this request, for a total Council Purchase Authorization of $160,000.

Is this purchase more than $25,000? [YES] [NO]
Is this the purchase of Real Estate or Land? [YES] [NO]
Is this the purchase of Public Art? [YES] [NO]
Is this a budget request for a purchase that will exceed the approved budget? [YES] [NO]

Advantages:
• Provides improved overflow parking for events held in Old Town and businesses.
• Separation between the railroad and Old Town businesses.
• Directs pedestrians to cross the Great Western railroad tracks at a safer/more appropriate location.
• Reduces parking within and adjacent to the railroad ROW.

Disadvantages:
• The parking portion is a temporary solution that will need to be removed and replaced in the future. The fencing between the railroad and Old Town businesses will remain.

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<th>Current Balance</th>
<th>Additional Budget Requested</th>
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<td>$0</td>
<td>$160,000</td>
<td>$160,000.00</td>
<td>$0.00</td>
</tr>
</tbody>
</table>
Town Council Purchase Authorization

Financial Impact:
- This item was not contemplated as part of the 2019 CIP. However, it is a necessary improvement to complete at this time for safety and to help accommodate upcoming Old Town events.
- Staff is requesting $160,000 to complete these improvements and submit applications to the railroad.
- Staff requested pricing from two contractors for this work. Both contractors have completed work for the Town and are on the Town’s "select bidders" list and meet the necessary qualifications. Connell Resources’ estimate was slightly lower than the Coyote Ridge estimate; therefore, staff is recommending Connell Resources Inc. for this work.

Recommendation/Justification:
Staff recommends Council’s approval of this resolution for the construction of the Old Town Interim Parking.

Authorizations:

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<tr>
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Requesting Department Signature

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Town Manager Signature

<table>
<thead>
<tr>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/22/2019</td>
</tr>
</tbody>
</table>
DESCRIPTION
A Resolution Approving The Fisher Subdivision Preliminary Plat

SUMMARY
Preliminary Plat proposal for 211 single family lots on 84 acres and 2 future
development tracts totaling 154 acres located west of CR-5 and south of CR-42E in the
Fisher Subdivision. This preliminary plat will also include a 7-acre open space park
along with open space tracts and greenbelts. The density in this area will be roughly 2.5
D.U./AC. This plat will have lots ranging from 6,300 sq. ft. to 10,100 sq. ft. and is in
alignment with the previously approved sketch plan.

PLANNING COMMISSION ACTION
The Planning Commission made a motion to recommend approval of the Fisher
Subdivision Preliminary Plat to the Timnath Town Council at its meeting on May
7, 2019 by 5-0 vote.

RECOMMENDATION
Staff recommends approval of the Preliminary Plat

KEY POINTS
Owner: Lorson South Land Corporation
Applicant: TB Group
Application Type: Preliminary Plat
Case Number: PP-2018-0003
Legal Description/Address: Southeast corner of CR-5 and CR-42E
Parcel Size (Acres): 238 +/- total acres
Number of Lots: 211

Existing Zoning: R-2 & RMU

Proposed Zoning: Unchanged

Existing Land Use: Vacant/Farming

Proposed Land Use: Single-Family Residential

SERVICES:
- Water: East Larimer County Water District
- Sewer: Boxelder Sanitation District
- Fire: Poudre Fire Authority

### Preliminary Plat Process Schedule

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<thead>
<tr>
<th>Task</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>Preliminary Plat Application</td>
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<tr>
<td>Application Certification</td>
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<td>9/25/2017</td>
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<tr>
<td>Comments Issued</td>
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<td>10/27/2017</td>
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<td>2nd Submittal</td>
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<td>11/26/2018</td>
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<td>Notice to Public and Posting of Property</td>
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<td>4/26/2019</td>
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<td>Planning Commission Public Hearing</td>
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### Adjacent Zoning/Land Uses:

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<th>Land Use</th>
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<td>FA-1, Unincorporated Larimer County</td>
<td>Farming</td>
</tr>
<tr>
<td>South</td>
<td>FA-1, Unincorporated Larimer County</td>
<td>Farming</td>
</tr>
<tr>
<td>West</td>
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<td>Farming</td>
</tr>
<tr>
<td>East</td>
<td>FA-1, Unincorporated Larimer County</td>
<td>Farming</td>
</tr>
</tbody>
</table>

### REVIEW CRITERIA


Preliminary Plat Review Criteria. In addition to all provisions of this Code, the Town shall use the following criteria to evaluate the applicant’s request:

1. The Preliminary Plat represents a functional system of land use and is consistent with the rationale and criteria set forth in this Code and the Comprehensive Plan.
Response: The preliminary plat amendment as presented meets this criterion. The Preliminary Plat is a functional system of land use. It meets the Low Density Residential designation on the Comprehensive Plan.

2. The application is consistent with the approved sketch plan and incorporates the Planning Commission’s recommendations and conditions of approval.
Response: The preliminary plat amendment is in conformance with the sketch plan that was approved by Planning Commission and Town Council.

3. The land use mix within the project conforms to Timnath’s Zoning District Map and Land Use Map and furthers the goals and policies of the Comprehensive Plan including.
Response: The preliminary plat amendment as presented meets this criterion. It is in compliance with the R-2 zoning requirements and dimensional standards. It meets the Low-Density Residential designation and supports the goals of the Comprehensive Plan. The Preliminary Plat is compatible with similar densities and lot sizes in the Town.

4. The utility and transportation design is adequate, given existing and planned capacities of those systems.
Response: The preliminary plat amendment as presented meets this criterion. The property has gone through a Transportation Impact Study and the road system is designed per LCUASS Standards. The utility infrastructure will be extended from Main Street and has been designed to accommodate the additional users. These will be reviewed in more detail at Final Plat.

5. Negative impacts on adjacent land uses have been identified and satisfactorily mitigated.
Response: The preliminary plat amendment as presented meets this criterion. The Preliminary Plat negative impacts that have been identified include the increase in traffic due to development of the property. This will be mitigated by the construction of roads that will hold the new capacity per LCUASS standards.

6. There is a need or desirability within the community for the applicant’s development and the development will help achieve a balance of land use and/or housing types within Timnath.
Response: The preliminary plat amendment as presented extends the existing housing supply with single-family lots.

RECOMMENDED MOTION
I move to approve a Resolution Approving the Fisher Subdivision Preliminary Plat, finding that a complete application was submitted and reviewed in accordance with all applicable Town regulations, the application conforms with the mission and goals of the Timnath Comprehensive Plan, and all criteria outlined in Section 2.9.10.9.C of the Timnath Land Use Code have been met, with the following conditions:
1. Allow staff to work with the owner and applicant to address minor, non-substantive modifications prior to final signatures.

ATTACHMENTS
1. Resolution
2. Preliminary Plat
3. Landscape Plan
4. Narrative
5. Approved Sketch Plan for Reference
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF TIMNATH
APPROVING THE FISHER SUBDIVISION PRELIMINARY PLAT, GENERALLY
LOCATED WEST OF AND ADJACENT TO MAIN STREET, AND SOUTH OF AND
ADJACENT TO COUNTY ROAD 42-E.

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, Lorson South Land Corporation (the “Developer”) has submitted a Preliminary Plat for the Fisher Subdivision, more particularly described in Exhibit A (legal description) and Exhibit B (Preliminary Plat) and attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, a properly noticed public hearing was held on May 7, 2019, and the above described Preliminary Plat was recommended for approval to the Town Council by the Town of Timnath Planning Commission by a 5-0 vote.

WHEREAS, a properly noticed public hearing with the Town Council was held on May 28, 2019 and upon hearing the statements of staff, the applicant(s) and giving consideration to the recommendations, the Town Council determines as provided below.

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH,
COLORADO:

Section 1. Approval
The Preliminary Plat 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

__________________________________________
Aaron Pearson, Mayor Pro Tem

ATTEST:

__________________________________________
Milissa Peters-Garcia, CMC
Town Clerk
EXHIBIT A

Legal Description of Property Proposed for Preliminary Plat

A tract of land located in the Southeast Quarter of Section 22 and the Northeast Quarter of Section 27, Township 7 North, Range 68 West of the 6th Principal Meridian, Town of Timnath, County of Larimer, State of Colorado and being more particularly described as follows:

Considering the South line of the Southeast Quarter of Section 22 as bearing North 89° 59' 32" West, and with all bearing contained herein relative thereto:

BEGINNING at the Southeast corner of Section 22; thence along the East line of the Northeast Quarter of Section 27, South 00° 08' 28" West, 908.42 feet; thence departing said East line, North 89° 51' 32" West, 198.00 feet; thence, South 00° 08' 28" West, 227.00 feet; thence, South 89° 51' 32" East, 198.00 feet to the East line of the Northeast Quarter of Section 27; thence along said East line, South 00° 08' 28" West, 1330.25 feet; thence departing said East line, North 89° 38' 57" West, 1316.03 feet; thence, North 00° 10' 45" East, 1914.41 feet; thence, North 28° 09' 22" West, 729.97 feet to the South line of the Southeast Quarter of Section 22; thence along said South line, North 89° 59' 13" West, 967.85 feet to the South Quarter corner of Section 22; thence along the West line of the Southeast Quarter of Section 22, North 00° 10' 47" East, 2648.79 feet to the Center Quarter corner of Section 22; thence along the North line of the Southeast Quarter of Section 22, South 89° 56' 32" East, 2631.12 feet to the East Quarter corner of Section 22; thence along the East line of the Southeast Quarter of Section 22, South 00° 14' 00" West, 2647.76 feet to the POINT OF BEGINNING.

The above described tract of land contains 10,399,692 square feet or 238.744 acres more or less and is subject to all easements and right-of-way now on record or existing.
EXHIBIT B

Preliminary Plat

[attached]
PRELIMINARY PLAT OF
FISHER FARM SUBDIVISION FIRST FILING
A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 22 AND THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 63 EAST OF THE 8th PRINCIPAL MERIDIAN, TOON OF TIMNATH, COUNTY OF LARIMER, STATE OF COLORADO

CERTIFICATE OF FILING
In accordance with Section 22-9-701, C.R.S., and the regulations promulgated under such section, the plat hereunto attached is certified to be true and correct in every particular and that the survey and plans are correct and in accordance with the requirements of Section 22-9-689, C.R.S.

SIGNATURES:

DRAWN BY: R. T. Tessely
REVIEWED BY: R. T. Tessely
FORT COLLINS: 301 North Howes Street, Suite 100, 80521 970.221.4158

NOTE:
The above-mentioned subdivision plat is a preliminary plat, and is subject to final approval by the Town of Timnath. All property lines, areas, and other boundaries shown on this plat are subject to change, and are not to be construed as the final plat for FISHER FARM SUBDIVISION. No part of the property shown on this plat is included in any existing improvements, and all improvements shown on this plat are subject to change. Property lines shown on this plat are subject to final approval by the Town of Timnath. This plat is for planning purposes only and is not an offer to sell or transfer a plat.
Preliminary Plat of Fisher Farm Subdivision First Filing

A tract of land located in the south east quarter of section 22 and the north east quarter of section 27, township 7 north, range 63 west of the 8th principal meridian, town of Timnath, county of Larimer, state of Colorado.
FREELIMINARY PLAT OF
FISHER FARM SUBDIVISION FIRST FILING
A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 22 AND THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 63 EAST OF THE 8TH PRINCIPAL MERIDIAN, TOWN OF TIMNATH, COUNTY OF LARIMER, STATE OF COLORADO

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</table>

In no event may any action based upon any defect in this survey be commenced within three years after discovery such defect.
FISHER FARM SUBDIVISION FIRST FILING

A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 22 AND THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 63 WEST OF THE 8TH PRINCIPAL MERIDIAN, TOWN OF TIMNATH, COUNTY OF LARIMER, STATE OF COLORADO

LEGEND

- Survey Lines
- Contour Lines
- Property Lines
- Street Centerlines
- Property Boundaries
- Utilities
- Water Bodies
- Easements

SINUS STREET, 31,92

FORT COLLINS:
301 North Howes Street, Suite 100, 80521
970.221.4158

RANGE:

TO WIT:

In no event may any action based upon any defect in this survey be commenced against the Surveyor, his agents, or employees, unless commenced within three years after you shall have discovered the defect.

TOWNSHIP:

According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you discover such defect.
FISHER FARM SUBDIVISION FIRST FILING
A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 22 AND THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 63 EAST OF THE 8TH PRINCIPAL MERIDIAN, TOWN OF TIMNATH, COUNTY OF LARIMER, STATE OF COLORADO

LEGEND
- STRUCTURE
- ROAD
- WATER
- ROADSIDE PROPERTY LINE
- PROPERTY LINE
- SURVEY
- REASONABLE ACCESS
- EVIDENCE OF TITLE
- CABLE
- BRIDGES/SPANS OVER SHEET

SECTION: IJKIZLHVHNAKY

According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you discover such defect.
### Landscape Schedule

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<th>SHEET INFORMATION</th>
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<tr>
<td>MATCH LINE SHEET 2</td>
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**Staff Comments**

**Sheet Number:** 3

**Issue Date:** 09/07/2017

**Date:** 11.20.18

**Note:** All shrub beds to receive a minimum of 4"-6" depth shredded cedar wood mulch.

### Landscape Legend

- **Shade/Canopy Trees**
- **Deciduous Shrubs**
- **Ornamental Trees**
- **Perennials/Grasses**
- **Evergreen Trees**
- **Sod**
- **Irrigated Turf**
- **4'-6' Depth Shredded Cedar Wood Mulch**

### Site Key Map

- Blocks: 1, 2, 3, 4, 5, 6, 7
- Lots: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

---

**Project Title:** Fisher Farm Subdivision First Filing

**Prepared For:** Lories South Development Corp., Llorson South LLC

**Address:** 273 N. Shoshone Ave., Suite 301

**City:** Colorado Springs, CO

**State:** CO

**Zip:** 80903

**Telephone:** 719.599.7755

**Fax:** 719.599.7788

**Twitter:** @lorisonarch

**Email:** info@lorisonarchitects.com

**Website:** http://lorisonarchitects.com

**Note:** This is an approximate equal to the actual project. Actual project may differ. Check with architect for final details.
FISHER FARM SUBDIVISION
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NOTE: TREE SPECIES TO BE PROVIDED PRIOR TO FINAL.
Fisher Farm Preliminary Plat Narrative

This request is for subdivision plat for approximately 159.9 acres known as the Fisher Farm Subdivision. There will be total of 214 lots averaging from 6,000 sq. ft. to 11,794 sq. ft. Overall gross density is 2.6 dwelling units per acre. The project has densities that are consistent with the R-2 Zone District Standards and the Land Use Map of the Comprehensive Plan, which is designated as Low Density Residential.

The Subdivision is consistent with the following sections of Chapter 5.2 of the Land Use Code:

5.2.1 Vision and intent

The Fisher Farm Subdivision embodies most all of the statements in this section. Notably, the project is walkable and pedestrian oriented. The project provides detached sidewalks throughout the development. A 10-foot concrete community trail is planned along County Road 5. The project will also provide an orderly street pattern with tree-lined streets, one and two-story buildings, and a safe friendly community. The Fisher Farm Subdivision provides a neighborhood layout that is intended to be consistent with the surrounding neighborhoods.

6.6.1. Lots and blocks

The lot and block layout of the Fisher Farm Subdivision is consistent with this section. The lengths of the blocks are appropriate and meet LCUASS standards. Where blocks are longer in length, breaks occur between the lots. The lot sizes are appropriate for the R-2 zoning district.

6.6.2. Circulation

The street pattern in the Fisher Farm Subdivision consists of local and collector streets, providing connections within the development and to the adjacent existing streets. All of the streets have detached sidewalks, street trees and a greenway, which creates a safe, efficient and attractive experience for both vehicles and pedestrians. Street A will serve as a collector street for the first phase of development in the subdivision. Improvements to County Road 42E and County Road 5 are anticipated.

5.7.5 Sidewalks, multi-use pathways and trails

5-foot-wide on-street sidewalks are provided throughout the Fisher Farm Subdivision providing linkages within the subdivision and to the surrounding neighborhoods. Additional soft surface trails will be evaluated as the design progresses. Trails within the neighborhood park will be provided as the design progresses. In addition, there is a planned 10’ roadside community trail system along County Road 5 per the PROST plan.
5.7.6 Parks and open space

Neighborhood Parks:
Fisher Farm provides for 1 neighborhood parks located in the first phase of development. It is centrally located making it very accessible and an easy walk to all residents within the existing subdivision. Timnath code requires a 5-acre neighborhood park for all subdivisions that include 200 lots or more. Fisher Farm includes 214 lots. This 6.7-acre park will contain active play areas and seating. It may include a shelter and turf field areas. The landscaping will consist of a drought tolerant turf blend, trees and shrubs as appropriate.

Pocket Park:
Two pocket parks are located within the subdivision to provide small outdoor areas throughout the site. The amenities for each pocket park will be defined at the time of final landscape plans.

Open Space:
The Fisher Farm Subdivision is planned to provide visual or direct access to open space for the majority of the lots. The intent is to provide a very open feel making each lot feel a little larger and more separated from nearby lots. The code minimum in Timnath for open space is 20%. The open space was calculated by using the total first filing area (159.916 ac) minus Outlot A, leaving 82.1 acres. Fisher Farm Subdivision has 27% of well-integrated functional open space. The open space provides recreational opportunities and is visibly and physically accessible to the entire neighborhood. 71% of the lots have access to open space. The open spaces are designed to provide various functions. Some of the opens spaces are utilized for storm water conveyance and detention. The open spaces located toward the core of the subdivision are primarily designed to be active irrigated open spaces.

5.7.7 Landscape design

The landscape design provides tree lawns with irrigated turf and one tree per 40 linear feet along all internal street frontages. Landscape for common open space consists of irrigated fescue and non-irrigated low grow native grass. High visibility areas are to be irrigated and will contain clusters of trees. Entries to the subdivision will be enhanced with shrubs, perennials and ornamental grasses and signage.

5.3.51 Fences, Walls and Hedges

The Fisher Farm Subdivision will contain a consistent fence design throughout. Fencing will include a 6’ white vinyl fence as well as a 3-rail white vinyl fence for areas adjacent to open space.

5.3.4 Building Form and Materials

The architecture for Fisher Farm Subdivision will continue the high-quality architecture consistent with the other residential homes constructed by the homebuilder. The builder will follow the model and block diversity as required by the Code.

5.2. Dimensional standards

All of the lots in Fisher Farm Subdivision meet the specifications outlined in the R-2 zone in Table 3-B. The lots are a minimum of 6,000 square feet. All of the lot widths are a minimum of 54 feet.
Lots without greenbelt along the rear lot line will comply with the 7’ side yard setback regulation. Lots with rear lot line greenbelts are planned for 5’ side yard setbacks.

**Sanitary sewer**

This property will be served by the Boxelder Sanitation District.

**Potable water**

This property is currently included in the East Larimer County Water District (ELCO) and will be served with potable water by said district.

**Non-potable water**

This property has access to non-potable water. A non-potable system will be used for the entire property.

**Fire Hydrants**

Fire hydrants will be spaced as appropriate per Poudre Fire Authority’s regulations.