TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 37, SERIES 2018

A RESOLUTION APPROVING THE AN AGREEMENT
WITH HARMONY, LLC FOR THE CONSTRUCTION
OF IMPROVEMENTS RELATED TO HARMONY ROAD PHASE 4

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 determined that it is in the Town’s best interest to do this work with the Harmony Road Phase 4 project; 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 agreement is hereby approved with Harmony, LLC for the construction of improvements with the Harmony Road Phase 4 project. The required agreement may be finalized by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON JULY 9, 2019.

TOWN OF TIMNATH, COLORADO

Jill Grossman-Belisle, Mayor

ATTEST:

Milissa Peters-Garcia, CMC
Town Clerk
July 17, 2019

VIA E-MAIL
Harmony, LLC (the “Developer”)
Attention: Byron Collins
byroncollins@comcast.net

Re: Construction of Artisan Place Connector to Harmony Road and Related Culvert and Reimbursement of Construction Costs

Dear Mr. Collins:

I am writing in response to your request for the Town of Timnath (the “Town”) to incorporate the construction work associated with connecting Artisan Place from its current southern limit to the edge of the Harmony Road right of way at the intersection of Artisan Place and Harmony Road, and installing a culvert in connection therewith (the “Construction Work”), all as part of Phase 4 of the Harmony Road Widening Project. It is mutually understood that all financing of the Town’s costs associated with this Construction Work will be provided by Harmony, LLC, a Colorado limited liability company (the “Developer”). This arrangement will be used as an alternative to the Developer’s existing obligation to contract for the Construction Work directly, as required in Paragraphs 6 and 20(b) of that certain Amended and Restated Subdivision Improvement Agreement for the Harmony Subdivision, dated the 12th day of December, 2011, and recorded in the Larimer County Real Property Records at Reception No. 20110078275 (the “Subdivision Improvement Agreement”). The Town agrees to directly contract for the above-referenced Construction Work, in the Town’s sole and absolute discretion, subject to the timely receipt of all financing from Developer for any and all related Construction Work costs. As such, the Town has obtained a quote from Connell Resources, Inc., a Colorado corporation (“Connell”), to perform the Construction Work, as further set forth in the enclosure provided herewith and incorporated herein by this reference (the “Change Order”).

In addition to the above referenced Construction Work, the Town, at the Town’s expense pursuant to Paragraph 2, Sections H and I of the Subdivision Improvement Agreement, will install sidewalk from Three Bell Parkway to Club Drive. In order for this work to occur, the existing previously-approved fence along this section will be required to be removed and reinstalled for grading issues. Per discussion, the Town will have their contractor remove and reinstall the Developer’s fence at the current horizontal location, and the Town will pay for the cost. The Town shall also pay for the cost to repair damage to any other section of the Developer’s fence caused by the Town or the Town’s contractors or agents during Phase 4 of the Harmony Road Widening Project. The Developer also gives permission for the required grading for the sidewalk and slope easements to occur outside of the right-of-way.
In return for the Town paying for the removal and reinstallion of fence from Three Bell Parkway to Club Drive, the Developer hereby commits that the Developer will be 100% responsible for the costs of removal and reinstallion of the fence from Club Drive to Latham Parkway. This fence removal will be required at the earlier of the future road widening (to 6-lanes) or sidewalk installation at the Towns’ discretion. It is the Town’s intent to commence with this section sidewalk design and installation as early as feasible, and the parties agree to cooperate in good faith in coordinating design and installation by the Town. The attached exhibit (Exhibit A – Fence Relocation Exhibit) depicts that portion of the fence removal and relocation from Three Bell Parkway to Club Drive being funded by the Town of Timnath, and it also indicates the portion of the fence removal and relocation from Club Drive to Latham Parkway which will be funded by the Developer. The Town agrees to mutual review and coordination of the design of the future sidewalk and fence impact, although the final decision will be the Town’s for sidewalk in the right-of-way. Costs associated with grading and fill for the sidewalk, regardless of location, will be borne by the Town. Permission is also granted to the Town for the future required slope easements and to do the required grading outside of the right-of-way to bring the sidewalk to the required elevation.

The Developer and the Town that time is of the essence in fulfilling their obligations under this letter agreement, and will cooperate in good faith to accommodate work contemplated by this letter agreement that may occur inside and outside of the right-of-way.

Your signed acknowledgement below will confirm that Developer agrees to pay the costs of removal and reinstallion of the fence from Club Drive to Latham Parkway referenced above and to fully and completely fund the Change Order for the Construction Work prior to the commencement of said work by Connell, and additionally that Developer agrees to fund any approved change orders or cost overages within 30 days of receipt of a request for reimbursement from the Town along with supporting documentation of such change order or cost overage. If you are in agreement with the above terms, please sign the attached Acknowledgement and return a copy to me, along with a deposit check for $222,532.00. Any amount on deposit with the Town in excess of the actual cost of the Construction Work will be returned to Developer in a timely manner.

Very Truly Yours,

Town of Timnath

[Signature]

By: Jill Grossman-Belisle
Town Mayor

cc: Robert G. Rogers, Esq., White Bear Ankele Tanaka & Waldron
ACKNOWLEDGEMENT OF AND AGREEMENT TO TERMS:

I, Byron R. Collins, as a duly authorized Manager of Harmony, LLC, a Colorado limited liability company, hereby acknowledge and accept on behalf of Harmony, LLC the terms as set forth herein.

Harmony, LLC,
a Colorado limited liability company:

By: Byron R. Collins, Manager