TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 64, SERIES 2019

A RESOLUTION APPROVING THE RETIREMENT TRANSITION AGREEMENT BETWEEN THE TOWN OF TIMNATH AND APRIL GETCHIUS

WHEREAS, the Town Council of the Town of Timnath (the “Town”) pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

WHEREAS, during her tenure as Town Manager, April Getchius contributed to numerous successful ventures welcoming commercial and residential developments to the Town; and

WHEREAS, the Town wishes to capitalize on the institutional knowledge and experience Ms. Getchius gained during her devoted career by hiring her as a consultant for the continued mentoring and guidance of Town Staff; and

WHEREAS, attached hereto as Exhibit A is an Retirement Transition Agreement between the Town and April Getchius (the “Agreement”); and

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

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO AS FOLLOW:

Section 1. Approval
The Agreement is hereby approved in substantially the form as attached hereto as Exhibit A, with such modifications and additions as the Town Manager, in consultation with Legal Counsel, determines to be necessary and appropriate to protect the interests of the Town or effectuate the purposes set forth herein and not otherwise inconsistent with this Resolution.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON DECEMBER 10, 2019.

TOWN OF TIMNATH, COLORADO

[Signature]
Jill Grossman-Belisle, Mayor
ATTEST:

Milissa Peters-Garcia, Town Clerk
EXHIBIT A

Retirement Transition Agreement
RETIREMENT TRANSITION AGREEMENT

This RETIREMENT TRANSITION AGREEMENT (the "Agreement") is entered into as of December 11th, 2019, by and between the TOWN OF TIMNATH, a home rule municipal corporation and political subdivision of the State of Colorado (the "Town") and APRIL GETCHIUS, an individual ("Getchius"). The Town and Getchius are sometimes referred to singularly as a "Party" and collectively as the "Parties." This Agreement will be effective on the date Getchius signs the Agreement.

RECITALS

WHEREAS, Getchius has dutifully served as the Town Manager pursuant to a Town Manager Employment Agreement dated March 12, 2013 (the "Employment Agreement"); and

WHEREAS, the Town appreciates the years of dedication Getchius contributed to the Town by fostering a prosperous community, overseeing substantial development and other service projects within the Town, and bringing together and managing a respected team of professionals; and

WHEREAS, the Town recognizes the valuable and substantive insights that Getchius has gained over the course of her impactful career; and

WHEREAS, the Town desires to leverage Getchius' institutional knowledge and experience to support the Town’s continued growth and success and to mentor new Town Staff members; and

WHEREAS, the Town and Getchius have come to a mutual decision regarding Getchius’ transition to retirement pursuant to the terms of this Agreement.

AGREEMENT

1. Employment Duties. Getchius will perform the following duties for her continued employment by the Town:

   a. Getchius shall be reasonably available in a consulting role until her date of retirement via telephone, email, or other means of communication to provide information and guidance on Town projects, procedures, and other relevant matters to the Town Manager, other Town Staff, or Town Consultants, as needed.

   b. Until her date of retirement, Getchius shall not directly or indirectly engage in any outside employment of financial interest which may conflict with the best interests of the Town or interfere with Getchius’ ability to perform her consulting duties. Examples include, but are not limited to, outside employment:

      i. That prevents Getchius from responding to the Town’s requests for information within a reasonable amount of time;

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ii. With a firm which has contracts with or does business with the Town; or

iii. May reasonably be perceived by members of the public as a conflict of interest or otherwise discredit public service to the Town.

2. Compensation. Getchius shall continue to receive her current salary and benefits, as provided for in her Employment Agreement, until her date of retirement.

3. Date of Retirement. Getchius’ last day of employment with the Town is December 31, 2020. Notwithstanding any provision of this Agreement, the parties agree that Getchius’ retirement is voluntary.

4. Return of Property. As soon as practicable, Getchius shall return to the Town, all property in her possession belonging to the Town, including any records, files, documents, or information, equipment, office supplies, computers, credit cards, cell phone, and all other property.

5. Payment of Wages. Getchius acknowledges that the Town’s payment of the salary and benefits as set forth herein constitutes all wages the Town owes to Getchius, and that Getchius has no claim for additional wages from the Town. Getchius waives all rights to accrual of additional paid time off as the effective date of this Agreement.

6. Conflict and Termination of Employment Agreement. In the event of any conflict between the terms of this Agreement and the Employment Agreement, this Agreement shall govern. The Parties hereby agree that the Employment Agreement is terminated as of the effective date of this Agreement and shall be of no further force and effect.

7. Advisement to Seek Legal Counsel and Getchius’ Warranties. Getchius understands that this Agreement is an important legal document, and acknowledges that the Town has advised Getchius to consult an attorney before signing this Agreement. Getchius represents and warrants:

   a. She has read and agrees to the terms of this Agreement; and

   b. She voluntarily executes this Agreement without being pressured or influenced by any statement or representation of any person acting on behalf of the Town, including the Town’s council members, employees or agents; and

8. Consideration. Getchius acknowledges that the consideration she has received under this Agreement is fair and adequate consideration for the promises made by Getchius in this Agreement.

9. Annual Appropriation. The Town 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 the Town pursuant to this Agreement requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations. Getchius expressly understands and agrees that the Town’s obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by the Town 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 the Town,
or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever
of the Town 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 Town funds. The Town'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.

10. **Agreement Subject to Limitations of Colorado Law; Release of Claims; Miscellaneous.**
   a. This Agreement may not be modified except by a written amendment executed by
      the Parties.
   b. This Agreement supersedes any prior oral or written understanding or agreement
      between the Parties.
   c. 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
Town, its respective officials, employees, contractors, or agents, or any other
person acting on behalf of the Town and, in particular, governmental immunity
afforded or available to the Town pursuant to the Colorado Governmental
Immunity Act, §§ 24-10-101 et seq., C.R.S.
   d. Town and Getchius further acknowledge that this Agreement is governed by
      Colorado law, and is accordingly subject to any and all applicable reporting and
disclosure requirements of § 31-30-108, C.R.S. and the Colorado Open Records
Act (§§ 24-72-202 et seq., C.R.S.).
   e. 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.
   f. The Parties agree that at no time, now or in the future, will either Party denigrate
or disparage the image or reputation of the other, nor will Getchius comment
negatively on past or current council members, any individual employed by the
Town, any individual otherwise engaged by the Town, or any service provided by
the Town.
   g. If any provision or part thereof in this Agreement is held invalid, illegal or
unenforceable for any reason, it is the Parties' intent, and request, that the remainder
of this Agreement will remain in full force and effect, and that the Court modify
this Agreement to the minimum amount necessary to make the remaining portions
enforceable.
   h. The headings in this Agreement are for reference only and shall not affect the
interpretation of this Agreement.
i. In exchange for the consideration received by Getchius herein, which such consideration Getchius was not entitled to but for Getchius’ entry into this Agreement, Getchius hereby releases, discharges and forever acquits the Town, each of its past, present and future council members, officers, appointees, employees, agents, insurers, contractors, successors, and assigns in their personal and representative capacities (collectively, the “Released Parties”), from liability for, and hereby waives, any and all claims, damages, or causes of action of any kind related to Getchius’ employment with any Released Party, the termination of such employment, and any other acts or omissions related to any matter occurring on or prior to the date that Getchius executes this Agreement, including without limitation any alleged violation through the date that Employee executes this Agreement of:

    i. Title VII of the Civil Rights Act of 1964, as amended;
    
    ii. the Civil Rights Act of 1991, as amended;
    
    iii. Sections 1981 through 1988 of Title 42 of the United States Code, as amended;
    
    iv. the Age Discrimination in Employment Act of 1967, as amended (including as amended by the Older Workers Benefit Protection Act);
    
    v. the Employee Retirement Income Security Act of 1974, as amended;
    
    vi. the Immigration Reform Control Act, as amended;
    
    vii. the Americans with Disabilities Act of 1990, as amended;
    
    viii. the National Labor Relations Act, as amended;
    
    ix. the Occupational Safety and Health Act, as amended;
    
    x. the Family and Medical Leave Act of 1993, as amended;
    
    xi. any state or federal anti-discrimination law,
    
    xii. any state or federal wage and hour law;
    
    xiii. any other local, state or federal law, regulation or ordinance;
    
    xiv. any public policy, contract, tort, or common law claim;
    
    xv. any allegation for costs, fees, or other expenses including attorneys’ fees incurred in the matters referenced herein;
    
    xvi. the Patient Protection and Affordable Care Act;
    
    xvii. Sarbanes-Oxley; and
xviii. any and all claims Getchius may have arising as the result of any alleged breach of contract, compensation plan or agreement with any Released Party (collectively, the “Released Claims”).

j. This Agreement is not intended to indicate that any such claims exist or that, if they do exist, they are meritorious. Rather, Getchius is simply agreeing that, in exchange for the consideration, Getchius is waiving any and all potential or contemplated claims of this nature that Getchius may have contemplated against the Released Parties, regardless of whether they actually exist. By signing this Agreement, Employee is bound by it. Anyone who succeeds to Getchius’ rights and responsibilities, such as heirs or the executor of Getchius’ estate, is also bound by this Agreement. This release also applies to any claims brought by any person or agency or class action under which Employee may have a right or benefit. THIS RELEASE INCLUDES MATTERS ATTRIBUTABLE TO THE SOLE OR PARTIAL NEGLIGENCE (WHETHER GROSS OR SIMPLE) OR OTHER FAULT, INCLUDING STRICT LIABILITY, OF ANY OF THE RELEASED PARTIES.

k. Notwithstanding this release of liability, nothing in this Agreement prevents Getchius from filing any non-legally waivable claim (including a challenge to the validity of this Agreement) with the Equal Employment Opportunity Commission (“EEOC”) or comparable state or local agency or participating in any investigation or proceeding conducted by the EEOC or comparable state or local agency; provided, however, Getchius understands and agrees that Getchius is waiving any and all rights to recover any monetary or personal relief or recovery as a result of such EEOC or comparable state or local agency proceeding or subsequent legal actions. Further, in no event shall the Released Claims include (i) any claim which arises after the date that this Agreement is executed by Employee, or (ii) any claim to vested benefits under an employee benefit plan.

l. Getchius represents that Getchius has not brought or joined any lawsuit or filed any charge or claim against any Released Party in any court or before any government agency and has made no assignment of any rights Getchius has asserted or may have against any of the Released Parties to any person or entity, in each case, with respect to any Released Claims.

m. Nothing in this Agreement is intended to release any right or claim that cannot be released under Federal or Colorado law, including Getchius’ right, if any, to apply for unemployment benefits under State law. The Town makes no representations as to the effect of this Agreement on Getchius’ eligibility for unemployment benefits.

n. This Agreement will benefit and be binding upon the Parties and their respective heirs, representatives, successors and assigns.

o. This Agreement is not and shall not be construed to be an admission of any act, practice or policy by the Town or Getchius in violation of any statute, common law
duty, constitution, or administrative rule or regulation. Further, this Agreement shall not constitute evidence of any such proscribed or wrongful act, practice or policy.

p. This Agreement may be executed in several counterparts and by facsimile or electronic signature, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

[Signature page follows.]
IN WITNESS WHEREOF, the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

TOWN OF TIMNATH, a home rule municipal corporation and political subdivision of the State of Colorado

By: Jill Grossman-Belisle, Mayor
Date: 12/10/19

ATTEST:

Date: 12/10/19
APRIL GETCHIUS, individually