

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 19, SERIES 2023**

**A RESOLUTION APPROVING LIGHTGIG LICENSE AGREEMENT – RIGHT OF
WAY**

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

WHEREAS, attached hereto as Exhibit A is Lightgig License Agreement – Right of Way (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, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON FEBRUARY 28, 2023.

TOWN OF TIMNATH, COLORADO



Mark J. Soukup, Mayor

ATTEST:



Milissa Peters-Garcia, CMC
Town Clerk



EXHIBIT A

LICENSE AGREEMENT – RIGHT OF WAY

LICENSE AGREEMENT – RIGHT OF WAY

THIS LICENSE AGREEMENT (“Agreement”) is made this 28th day of February 2023 by and between the **TOWN OF TIMNATH**, a municipal corporation of the State of Colorado (“Licensor” or “Town”) and **LIGHTGIG COMMUNICATIONS, LLC**, whose address is 2809 E Harmony Rd, Suite 310, Fort Collins, CO 80528, (“Licensee”) (collectively “the Parties”).

Licensee desires to construct, maintain, use and operate the Facilities (defined below) within certain portions of Town’s dedicated right-of-way within the Town, in Larimer County and Weld Counties, Colorado (collectively, “Town ROW”).

In consideration of the mutual promises contained herein and for the sum of \$10.00 (Ten Dollars) to be paid upon execution of this Agreement, the Parties agree as follows:

ARTICLE I - LICENSE

- A. Subject to all the terms and conditions hereof, Licensor hereby grants to Licensee a non-exclusive license and permission to enter upon and have ingress to and egress from the Town ROW (the “License”) solely for the purpose of constructing, maintaining, using and operating a fiber optic network (the “Facilities”). The Facilities shall be installed in the approximate orientation and location shown in the approved ROW permits filed in accordance with this License Agreement. The licensed location is referred to herein as the “Town ROW.” Licensee hereby expressly agrees and acknowledges that use by Licensee of the Town ROW is subject to the Town Code of the Town of Timnath, as it may be amended from time to time.
- B. Licensor shall retain all rights in and usage of the Town ROW and the use of such Town ROW may be granted to other parties, with no liability to Licensor. The License is subject to existing interests, easements, leases, licenses, franchises, and permits (if any) heretofore granted, reserved or held by Licensor, its predecessors in interest, or any other person or entity affecting any of the Town ROW. Licensee’s use of the Town ROW shall not interfere with Licensor’s use and/or maintenance of the Town ROW, nor with the needs and requirements of Licensor’s tenants, franchisees, easement beneficiaries, licensees, or lien holders, nor with the use of their improvements within the Town ROW.
- C. Licensee shall contractually require its employees, agents, contractors and subcontractors performing activities hereunder to comply with each of the terms and conditions of this Agreement and to acknowledge all rights reserved to Licensor hereunder. Licensee shall also comply with all applicable provisions of the Town Code of the Town of Timnath, as it exists at the time of the grant of this License, and as said code may be amended in the future.

ARTICLE II - TERM OF LICENSE AGREEMENT

This Agreement shall become effective upon execution by both Parties and shall remain in effect for a term of thirty (30) years from the date hereof, unless otherwise terminated by either Party pursuant to the provisions of Article III. Following the expiration of the initial term, the License shall automatically renew for successive ten (10) year terms, unless terminated by either party pursuant to the provisions of Article III. The Parties anticipate that this License Agreement may be renewed at the end of the initial license term, but nothing in this License Agreement shall

be construed to create in Licensee an expectation of renewal, other than as expressly agreed to in a writing signed by properly authorized officers of the Parties.

ARTICLE III - TERMINATION

A. **Termination at the End of the License Term.** 90 days prior to the expiration of the initial license term or the automatically extended terms set out in Article II, Licensee shall notify Licensor in writing that the term is due to renew. Upon receipt of such notice from Licensee, Licensor shall acknowledge, in written form delivered to Licensee, the automatic extension.

B. **Termination of License for Cause.** Licensee agrees that in the event of a violation by Licensee of the terms of this Agreement, such violation shall be corrected by Licensee immediately upon receipt of written notice from Licensor ("Default Notice"). If the violation is not cured to the satisfaction of Licensor within thirty (30) days after receipt by Licensee of the Default Notice, or such longer period as the Parties may agree in writing, Licensor may terminate this Agreement, or, without prejudice to Licensor's right to terminate this Agreement, elect to correct or eliminate the violation at Licensee's expense. If Licensee fails to cure such violation within the time period described above, or to timely reimburse Licensor, Licensor may, by written notice to Licensee (the "Termination Notice"), terminate the Agreement, effective immediately. Reimbursement to Licensor under this Article 3.B shall be due and payable thirty (30) days after Licensee's receipt of a written invoice and supporting documentation.

C. In the event of the Termination of License as described in Article III sections A and B, all Facilities already installed by Licensee shall remain in place, the property of Licensee, and continue to be operational for up to 180 days during which time the parties shall negotiate in good faith to enter into a replacement License Agreement. The installation of any additional Facilities by Licensee shall be prohibited until and unless a new License Agreement between the Town and the Licensee is in place.

ARTICLE IV - CONSTRUCTION

A. All initial placement work shall be coordinated with the Town of Timnath Public Works Director, at office number 970-224-3211. Licensee shall obtain an ROW Permit (defined below) if required by Licensor in accordance with Article V (*Maintenance and Emergency Access*). Licensor reserves the right to have Town personnel present during construction, maintenance, modification, adjustment, relocation or removal of the Facilities. Licensee shall promptly remove all tools, equipment and materials from the Town ROW upon completion of construction and installation of the Facilities and Licensee shall restore the surface of the Town ROW to substantially the same state and condition as when entered upon.

B. The Facilities shall be designed in accordance with, and any construction on the Town ROW related to the subject matter of this Agreement shall be done in strict compliance with, all applicable provisions of Larimer County Urban Area Street Standards and Town Design Criteria.

C. Licensee shall ensure that the Facilities are constructed with due care, at Licensee's expense,

and in full compliance with federal and state law and applicable industry and Town construction standards.

- D. During construction, and after construction has been completed, the Town shall have the right to inspect and accept the installation of the Facilities, and may require Licensee to undertake corrective work if the work fails to conform to Town design criteria, Town construction standards, applicable federal, state or local laws and/or applicable industry standards. Licensor shall also have the right to require Licensee to take immediate corrective action if the work results in a situation which may constitute a public hazard or a dangerous condition to persons or property, in accordance with Article V of this Agreement. Licensee shall restore the surface of the Town ROW, including re-vegetation, to substantially the same state and condition as when entered upon.
- E. Licensee shall, within sixty (60) days of Town's inspection and acceptance, provide the Town with one full-sized set of as-built drawings showing the exact location of the Facilities as constructed, including horizontal and vertical ties to referenced benchmarks.

ARTICLE V - MAINTENANCE AND EMERGENCY ACCESS

- A. Licensee shall ensure that the Facilities are constructed, installed, operated and maintained, at Licensee's expense, in good repair and in full compliance with applicable federal and state law, and to industry and Town standards.
- B. Licensee shall obtain an approved right of way access permit ("ROW Permit") from the Town whenever Licensee or its equipment will be present within the Town ROW, unless waived by the Town. Licensee must initiate a request for an ROW Permit twenty-one (21) days in advance of any work on the ground. Depending on the extent of the work, Licensee's employees and contractors may be required to attend an Access Permit coordination meeting at a time and date to be established by the Town.
- C. If a ROW Permit is granted, Licensee shall provide any flagger necessary to protect the Town ROW, citizens and employees, and the general public, at Licensee's cost.
- D. Whenever a ROW Permit is in place, Licensee shall ensure that the following requirements are met:
 - 1. A copy of the signed ROW Permit must accompany Licensee's employees and/or contractors on site.
 - 2. Licensee's employees and/or contractors must keep proof of safety training completion readily available while working on the site.
 - 3. Licensee's employees and/or contractors must have safety-trained and qualified look-outs on site for Licensee's work.
 - 4. Licensee's employees and/or contractors must wear orange MUTCD 2009 Class II compliant high visibility safety vests at all times while working on the site.
 - 5. Licensee's employees and/or contractors must notify the Town Public Works Director at 970-224-3211 prior to entering, and when clear of, the Town ROW.
 - 6. When required by the Town ROW Permit, Licensee shall engage flagpersons, at Licensee's cost, to protect, expedite and assure the safety of vehicular movement around the work

area.

- E. The Town may refuse to grant any ROW Permit on either safety or operational grounds or may grant any ROW Permit request subject to special condition(s). All conditions, including special operating conditions, set forth in a granted ROW Permit and the terms of the Town Code, shall be deemed to be incorporated herein by this reference.
- F. **In case of emergency** caused by failure of the Facilities within the Town ROW, or other condition which is the result of Licensee's design or work on the ground, Licensee shall immediately notify the Town Director of Public Works at 970-224-3211 of such emergency and shall advise the Town of Licensee's proposed actions to immediately address such emergency. Licensee shall, if reasonably practicable, avoid remedial operations that would delay or obstruct traffic within the Town ROW. If Licensee cannot do so, Licensee shall, if reasonably practicable, avoid such delay or obstruction to Town ROW during Town peak hours of 6:00 a.m. to 9:00 a.m. and 3:00 p.m. to 6:30 p.m. of any weekday. Otherwise, Licensee shall expeditiously prosecute such measures as will safely address the emergency and permit resumption of safe and timely service.

ARTICLE VI - MODIFICATION OR RELOCATION

Licensee shall modify, adjust, or relocate all or any portion of its Facilities, as the Town may designate, whenever the Town finds such action necessary or desirable to modify, adjust, or relocate due to any existing or planned Town-developed infrastructure, or other Town capital projects, or infrastructure of utilities with easement or franchise agreements predating this Agreement, to comply with federal and state law or regulation, or to comply with provisions of the Town Code, including any future changes of law or modification of the Town Code. Licensee shall bear the entire cost and expense incurred in connection with any such modification, adjustment, or relocation of the Facilities, including any and all expenses which may be incurred by Licensor in connection therewith for supervision, inspection, impacts to Licensor's facilities or operations or otherwise. If Facilities are so modified, adjusted, or relocated within the Town ROW, all of the terms, conditions and stipulations herein expressed with reference to the Facilities shall, so far as any Facilities remain within Town ROW, apply to the Facilities as modified, adjusted, or relocated. Each of the terms of Article IV shall apply to the modification, adjustment, or relocation of the Facilities within the Town ROW.

ARTICLE VI - DIGGING AND BORING

Prior to performing any digging or boring activities on the Town ROW, Licensee shall determine if a telecommunications system or other utility (including without limitation, water, wastewater, lighting, signaling, communications of any kind or nature, electrical, natural gas, steam or other utility) is buried anywhere on or about the Town ROW in the location where Licensee will perform such digging or boring activities. Licensee shall, at all times, comply with and utilize the Colorado 811 service to protect underground facilities from damages relating to excavation. If there are such water, wastewater, lighting, signaling, communications of any kind or nature, electrical, steam, gas, telecommunications facilities or other utility facilities, Licensee will inform the owner of such telecommunications system or other utility, and take such measures in concert with the owners(s) as are necessary so as not to damage such systems or utilities.

ARTICLE VII - NOTICES

Unless otherwise prescribed in this Agreement, any notices required to be given shall be given in writing and mailed by U.S. mail, first class postage prepaid, and addressed as follows:

To the Town: Town of Timnath
 Attn: Town Manager
 4750 Signal Tree Drive
 Timnath, CO 80547
 970-224-3211 (phone)
 970-224-3217 (fax)

With copy to: TIMNATH TOWN ATTORNEY
 4750 Signal Tree Drive
 Timnath, Colorado 80547
 (970) 224-3211 (phone)
 (970) 224-3217 (fax)

If to Licensee: LightGig Communications
 2809 E Harmony Rd, Suite 310
 Fort Collins, CO 80528
 970-460-8004 (phone)

The address or telephone number to which any notice, demand, or other writing may be given may be changed by written notice given as above provided.

ARTICLE IX - LIABILITY

- A. Licensee shall be responsible for any damage, including Environmental Damages (defined below), to any property, including the Town ROW, or any other Town property, whether real or personal, Licensee's property, adjacent property, utilities, adjacent structures, and other third party real or personal property, which damage is caused by Licensee's or its contractors' activities and Licensee shall either promptly repair such damage, or pay damages to the reasonable satisfaction of the owner of the damaged property, in either case, or in any case, at no cost to Licensor. Licensor and Licensee shall notify one another of any such damage and any potential claims arising out of such damage.
- B. Licensee shall, and shall contractually require its contractors to, indemnify, defend and hold harmless Licensor and its officers, councilmembers, employees, consultants, agents and contractors against and from all claims (including without limitation actions, demands, expenses, costs, attorneys' fees, court costs and judgments of any kind or nature whatsoever) arising out of or caused by Licensee's and/or its contractors' use of the Town ROW hereunder, including, but not limited to, Environmental Damages (defined below). It is the intention of the Parties hereto that the indemnity from Licensee to Licensor provided for in this section indemnifies the Town, its officers, councilmembers, consultants, agents, contractors, and employees for their own negligence, whether that negligence is active or passive, or is the sole or a concurring cause of the injury, death or damage; **provided that said indemnity shall not protect Town from liability for death, injury or damage arising solely out of the willful**

misconduct, gross negligence and/or criminal actions of the Town, its officers, directors or employees while acting in their official capacities. In the event of any claims made or suits filed, each Party shall give the other prompt written notice thereof, and Licensor shall have the option to defend or reasonably settle the same as to claims or suits made against it, without effect as to Licensee's obligations hereunder.

- C. The provisions of this Article IX shall survive the termination, in whole or in part, of this Agreement.

ARTICLE X - NO WARRANTY

- A. Licensor does not grant nor purport to grant any right not specifically set forth herein. Permission for the Licensee or its contractors to traverse the property of any other property owners or interest-holders is the sole responsibility of Licensee, as is procurement of any applicable regulatory permission or consent.
- B. The right to use the Town ROW granted hereunder is hereby contracted for and shall be granted with respect to the Town ROW in its "AS IS" physical condition without any warranty, express or implied. The License is subject to all other prior granted or reserved rights and interests in the Town ROW, if any, whether of record or not.
- C. Licensee specifically assumes all risk of loss, damage, or destruction to any tools, equipment, or materials, if any, that Licensee or its contractor stores on the Town ROW, whether the loss, damage or destruction results from accident, tort, crime, act of God, the elements, severe weather, theft or vandalism.

ARTICLE XI - INSURANCE

- A. The Licensee shall acquire and maintain, at its sole cost and expense, during the entire term of this Agreement, insurance coverage in the minimum amounts set forth in **Exhibit A**, attached hereto and incorporated herein by this reference. A waiver of subrogation and rights of recovery against the Town, its councilmembers, officers, employees, consultants, and agents is required for Commercial General Liability and Workers Compensation coverage. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the Town, including its officials, officers, employees and consultants as additional insureds. All coverage provided pursuant to this Agreement shall be written as primary policies, not contributing with and not supplemental to any coverage that the Town may carry, and any insurance maintained by the Town shall be considered excess coverage. The Town shall have the right to verify or confirm, at any time, all coverage, information or representations contained in this Agreement, and, in addition to any other provision of this Agreement, Licensee shall make all such insurance information, of any kind or nature, available to Lessor within 48 hours of any request by Licensor.
- B. Prior to commencing any work under this Agreement, the Licensee shall provide the Town with a certificate or certificates evidencing the policies required by this Agreement, as well as the amounts of coverage for the respective types of coverage, which certificate(s) shall be attached hereto as **Exhibit A-1**. If the Licensee subcontracts any portion(s) of the work pursuant to this Agreement, said subcontractor(s) shall be required to furnish certificates evidencing statutory workers' compensation insurance, comprehensive general liability insurance and automobile liability insurance in amounts satisfactory to the Town and the Licensee, provided, however, that

subcontractors of the Licensee shall not be required by the Town to provide coverage in excess of that which is required hereunder of the Licensee. If the coverage required expires during the term of this Agreement, the Licensee and/or subcontractor(s) shall provide replacement certificate(s) evidencing the continuation of the required policies.

- C. The Licensee's failure to purchase the required insurance shall not serve to release it from any obligations contained in this Agreement; nor shall the purchase of the required insurance serve to limit the Licensee's liability under any provision in this Agreement. The Licensee shall be responsible for the payment of any deductibles on issued policies.

ARTICLE XII - ENVIRONMENTAL OBLIGATIONS

- A. For purposes of this "Environmental Obligations" section, the terms "Activity" and "Activities" shall include any action or omission of Licensee, and/or of the subsidiaries, affiliates, agents, contractors, employees, successors or assigns of Licensee. This Article XII shall survive termination or expiration of this Agreement.
- B. No Hazardous Material on Property. Except in strict compliance with all Environmental Requirements (defined below), Licensee shall not cause, permit or suffer any Hazardous Material (defined below) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, in, about, or beneath the Town ROW or any portion thereof by Licensee, its agents, employees, contractors, tenants or invitees, or any other person.
- C. No Violations of Environmental Requirements. Licensee, in performing the Activities shall not cause, permit or suffer the existence or the commission by Licensee, its agents, employees, contractors, or invitees, of any material violation of any Environmental Requirements upon, in, about or beneath the Town ROW or any portion thereof.
- D. No Environmental or Other Liens. Licensee, in performing the Activities, shall not create or suffer to exist with respect to the Town ROW or any other property of the Town, or permit any of its agents (including, but not limited to, contractors) to create or suffer to exist any lien, security interest or other charge or encumbrance of any kind, including without limitation, any lien imposed pursuant to section 107(f) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Section 9607(1) or any similar federal or state statute.
- E. For purposes of this Agreement, "Hazardous Material(s)" means any and all substances, chemicals, wastes, or other materials now, or from time to time hereafter:
1. defined as hazardous substances or hazardous wastes pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.) (CERCLA), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.) (RCRA), and/or the Colorado Hazardous Waste Act Sections 25-15-101 et seq., Colorado Revised Statutes and the Colorado Hazardous Waste Regulations, 6 C.C.R. 1007-3;
 2. characterized as hazardous or toxic materials, substances, chemicals, pollutants, contaminants or wastes that are regulated, subject to permitting or warning requirements, or for which removal, remediation or disposal is required or regulated, under any and all laws for the protection of the environment, human health and safety, including without limitation CERCLA, RCRA, the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean

Water Act (33 U.S.C. §§ 1251–1387, inclusive, and U.S.C. sections amended 33 U.S.C. ch. 23 § 1151), the Clean Air Act (42 U.S.C. § 7401 et seq.) and/or the Colorado Hazardous Waste Act (§ 25 15-311 et seq., Colorado Revised Statutes); the Colorado Solid Waste Act (§ 30-20-100.5 et seq., C.R.S); the Colorado Water Quality Control Act (§ 25-8-101 et seq., Colorado Revised Statutes), Colorado Air Pollution Prevention and Control Act (§ 25-7-101 et seq., Colorado Revised Statutes), Title 8 Article 20.5, Colorado Revised Statutes and any federal, state or local regulations and associated guidance required by such laws, statutes and regulations, or promulgated thereunder; or

3. otherwise posing a present or potential risk to human health, welfare or the environment, including, without limitation, asbestos, flammable, explosive, corrosive or radioactive materials, gasoline, oil, motor oil, waste oil, petroleum (including without limitation, crude oil or any component thereof), and petroleum-based products, paints and solvents; lead, cyanide, DDT and other pesticides, and polychlorinated biphenyls.
- F. "Environmental Requirements" means all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, including, without limitation:
1. all requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of Hazardous Materials, whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials, whether solid, liquid, or gaseous in nature; and
 2. all requirements pertaining to the protection of the health and safety of employees or the public.
- G. "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including, without limitation, strict liability, or joint and several liability), encumbrances, liens, costs, and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement of judgment related to Activities, of whatever kind of nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred at any time as a result of the existence of Hazardous Material upon, about, or beneath the Town ROW or migrating or threatening to migrate to or from the Town ROW, or the existence of a violation of Environmental Requirements pertaining to the Town ROW and including without limitation:
1. damages for personal injury (including without limitation wrongful death), or injury to property or natural resources (of any kind or nature whatsoever) occurring upon or off of the Town ROW, foreseeable or unforeseeable, including, without limitation, lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on real property, interest and penalties including but not limited to claims brought by or on behalf of employees of Licensee;

2. fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Environmental Requirements including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonably necessary to make full economic use of the Town ROW or any other property otherwise expended in connection with such conditions, and including without limitation any attorneys' fees, costs and expenses incurred in enforcing this Agreement or collecting any sums due hereunder; and
3. liability to any third person or governmental agency to indemnify such person or agency for cost expended in connection with the items referenced in Article XII.G.1 and 2, herein.

ARTICLE XIII - SAMPLES/REMOVAL

As between Licensee and Licensor, Licensee shall be solely responsible for the lawful removal, manifesting, transport, testing and disposal of any samples or other materials, including Hazardous Materials, removed from the Town ROW or generated as a result of activities done pursuant to this Agreement, and shall duly and properly perform or cause to be performed any such Activities or activities that it undertakes or is required to undertake pursuant to law. Licensee states and agrees that as between Licensee and Licensor, Licensee is the sole Generator (as the term "Generator" is used in applicable statutes and regulations concerning the removal, transport and/or disposal of Hazardous Materials, substances, waste or other contaminants) of any materials, including Hazardous Materials, removed from the Town ROW by Licensee, its agents, consultants or contractors or generated as a result of sampling and/or testing activities undertaken by Licensee, its agents, consultants or contractors. This Article XIII shall survive termination of this Agreement.

ARTICLE XIV - GENERAL

- A. Assignment. This Agreement may not be assigned by Licensee without the prior written consent of Licensor. No Licensor-approved assignment shall release Licensee from any liability hereunder. Any assignment in violation of this Agreement shall be null and void ab initio.
- B. Agreement Binding. This Agreement, and all of the covenants, terms and conditions herein contained, shall be binding upon and inure to the benefit of the Parties hereto, and their respective permitted successors and assigns.
- C. Laws to Apply; Jurisdiction and Venue. The laws of the State of Colorado and applicable federal, state and local laws, rules, regulations and guidelines govern this Agreement. Jurisdiction and venue for all disputes shall be in the county in which the Town ROW is located and Licensee expressly submits itself to the jurisdiction thereof and venue therein.
- D. Amendment. This Agreement may not be amended except in writing by mutual agreement of the Parties, nor may rights be waived except by an instrument in writing signed by the Party charged with such waiver.
- E. No Agency. It is expressly understood and agreed that Licensor and Licensee do not intend to be and shall not in any respect be deemed agents of each other.

- F. Headings. The headings of the sections of this Agreement are inserted for reference purposes only and are not restrictive as to content.
- G. Liens. Licensee shall not permit any lien, claim or other charge to be placed on the Town ROW or any other Town property, and Licensee shall promptly cause any such lien, claim or charge to be removed. If any mechanic's lien, claim or other charge is filed against the Town ROW, or any other Town property, Licensee shall discharge the same of record by a release or bond within thirty (30) days after the filing of any notice of such lien, claim or other charge. This Article XIV.G shall survive termination of this Agreement.
- H. Severability. If any part of this Agreement is found, decreed or held to be void or unenforceable the remainder of the provisions of this Agreement shall not be affected and shall remain in full force and effect.
- I. Legal Authority. The Licensee warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind the Licensee to its terms. The person(s) executing this Agreement on behalf of the Licensee warrant(s) that such person(s) have full authorization to execute this Agreement.
- J. Town Code. All references herein to the Town Code or the Timnath Town Code shall mean the Home Rule Charter and Municipal Code of the Town of Timnath, Colorado, including all attachments, rules and regulations promulgated thereunder, as it exists on the effective date of this Agreement and as it may be amended from time to time.


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

ATTEST:

TOWN OF TIMNATH


 Milissa Peters-Garcia, Town Clerk


 Aaron Adams, Town Manager

APPROVED AS TO LEGAL FORM

DocuSigned by:

 F44B3063ECD940F
 Carolyn R. Steffl, Town Attorney
 Date: 3/21/2023

LICENSEE:


By: 
5BB473076AE5428...
Philip Hartman
Title: Executive Vice President
Date: 3/15/2023

EXHIBIT A INSURANCE REQUIREMENTS

NOTE: All insurance required and provided hereunder shall also comply with the provisions of Articles XI and XII of this Agreement.

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 \$1,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 designated location, general aggregate, and \$1,000,000 umbrella. Such insurance will include coverage for contractual liability, personal injury and broad form property damage, and shall include all major divisions of coverage and be on a comprehensive basis including, but not limited to:
 - a. premises operations;
 - b. personal injury liability without employment exclusion;
 - c. limited contractual;
 - d. broad form property damages, including completed operations;
 - e. medical payments;
 - f. products and completed operations;
 - g. independent consultants' coverage;
 - h. coverage inclusive of construction means, methods, techniques, sequences, and procedures, employed in the capacity of a construction consultant; and

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.
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. If applicable: Contractor shall secure and maintain a third-party fidelity bond in favor of the Town covering the Contractor and its employees and agents who may provide or be responsible for the provision of Services where such activities contemplate the responsibility for money or property of the Town. Such bond shall protect the Town against any fraudulent or dishonest act which may result in the loss of money, securities, or other property belonging to or in the possession of the Town. Said bond shall be in an amount as determined by the Town, from a surety acceptable to the Town.

5. **Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.**

EXHIBIT A-1
CERTIFICATE(S) OF INSURANCE

