

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 50, SERIES 2023**

**A RESOLUTION APPROVING AN IGA WITH LOVELAND FOR BROADBAND
SERVICES**

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 the Intergovernmental Agreement with Loveland to provide Broadband Services to Timnath; and

WHEREAS, the Town Council of the Town of Timnath has passed resolution of support for Broadband in Timnath; 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. Furthermore, the Town Manager is authorized to execute such Agreement on behalf of the Town of Timnath.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON AUGUST 8TH, 2023.

TOWN OF TIMNATH, COLORADO


Mark J. Soukup, Mayor

ATTEST:


Milissa Peters-Garcia, CMC
Town Clerk



EXHIBIT A

AGREEMENT

**INTERGOVERNMENTAL AGREEMENT FOR
PULSE BROADBAND SERVICES
IN THE TOWN OF TIMNATH**

THIS INTERGOVERNMENTAL AGREEMENT FOR PULSE BROADBAND SERVICES IN THE TOWN OF TIMNATH (“Agreement”) is made and entered into this 14th day of December, 2023, by and between the City of Loveland, Colorado (“Loveland”) and the Town of Timnath, Colorado (“Timnath”) (individually a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, Loveland is a home-rule municipality which has established the Loveland Electric and Communications Enterprise, branded as “Loveland Pulse” (“Pulse”) to undertake the financing, construction, and all further operations for the provision of municipal broadband internet service, as that term is defined at C.R.S. § 40-15-102(3.3); and

WHEREAS, Timnath is a home-rule municipality that wishes to provide its residents access to high-quality broadband internet service; and

WHEREAS, to leverage Loveland and Timnath’s respective resources and efficiencies to provide reliable, competitive, and cost-effective broadband internet service with high-speed internet capable of at least one gigabits-per-second (1 Gbps) upload and download speeds (“Broadband Service”), the Parties each desire to collaborate with each other; and

WHEREAS, Loveland has the means to design, construct, and operate a Broadband Network (defined below) within the jurisdictional boundaries of Timnath to provide Broadband Service to Timnath residents and Timnath does not currently have the financial or institutional means to directly provide such Broadband Service and would benefit from Loveland providing such service; and

WHEREAS, to establish the manner and means by which Loveland will design, construct, own, and operate a Broadband Network within Timnath and Timnath will pay for the design and construction of such Broadband Network, the Parties wish to enter this Agreement; and

WHEREAS, as Colorado governmental entities, Loveland and Timnath are authorized, pursuant to Colo. Const. art. XIV, § 18(2)(a) and C.R.S. § 29-1-203, to cooperate or contract with one another to acquire or provide any government function, service, or facility lawfully authorized to each.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

AGREEMENT

- 1. Recitals.** The above recitals are incorporated as though stated herein.

- 2. Grant of Access.** Timnath grants Loveland the non-exclusive authority to enter any and all parts of the Town of Timnath to provide Broadband Service. This access encompasses the right to provide Broadband Service to Timnath residents—natural persons, commercial enterprises, or otherwise—as well as install and maintain Broadband Service facilities to serve such residents. By this grant of access, Timnath does not purport to convey, nor does Loveland purport to receive, the right to enter private property that would require permission from private entities, including natural persons or corporate entities, for access to provide Broadband Services. Timnath will grant Loveland access to all Timnath owned rights-of-way through its permitting process to deliver Broadband Service to Timnath residents. Access shall not occur prior to the appropriate and necessary permit(s) being issued. Access granted by Timnath shall not impede or otherwise violate any other existing agreements with other parties and shall be subject to any existing easements, rights, or privileges of third parties and new installations shall not be located in a manner that interferes with existing facilities installed in the right-of-way. Timnath will establish a bulk right-of-way permitting process to allow Loveland to permit no less than two hundred (200) premises at a time.
- 3. Work Performed by Loveland.** In its reasonable discretion, Loveland, through Pulse or any successor entity, shall undertake the design, procurement of materials, and construction of a broadband network (“Broadband Network”), as defined in C.R.S. § 40-15-102 (3.7), (the “Work”) to serve Timnath residents and properties in accordance with work orders (“Work Order”), an example of which is attached hereto as **Exhibit A**, that will define a specific portion of the Broadband Network to design and construct. The Parties agree that the Work may be performed in phases, where each phase will consist of Loveland designing, procuring materials, and constructing a portion of the Broadband Network to serve a specified area (“Service Area”) in Timnath. Each phase may be divided into several Work Orders, and the sum of the cost for the Work Orders for a phase shall not exceed the total Broadband Services Funding for that phase (defined below) as authorized by the Town Council of Timnath. The Work shall be performed in a good and workmanlike manner and in accordance with applicable laws. The scope of work will be further defined in each Work Order. Following installation or repair of any portion of the Broadband Network that disturbs property within the Town of Timnath, Loveland shall restore the property to substantially its condition prior to the construction or repair.
- 4. Timnath to Fund All Design, Procurement, and Construction.** Timnath will pay for all design, procurement of materials, and construction undertaken under this Agreement (“Broadband Service Funding”). Once a Work Order is initiated by mutual consent and written agreement of Timnath and Loveland, Timnath will make payment to Loveland an amount sufficient to cover all estimated costs related to the Work Order. Eligible uses of Broadband Service Funding include, but are not limited to, all costs related to reasonable and necessary design, engineering, labor, licenses, outside plant and service drop installation, permitting, materials, supplies, equipment, equipment rentals, construction-related education and outreach, reimbursables, federal, state, and local income taxes, if any, payroll for Loveland employees for time actually worked on the Work Order along with related unemployment taxes, unemployment insurance and social security withholdings, and other costs necessary in the performance of the Work. Loveland shall not treat

Broadband Service Funding as revenue or profit for provision of Broadband Service. In the event the Work for a Work Order has not been initiated within one-half year (one-hundred and eighty-three days) of Timnath providing the funding to Loveland for the specific Work Order, Timnath shall be permitted to require Loveland to return the Timnath Broadband Service Funding along with any interest that has accrued in connection with the funds, if the funds have been invested in an interest-bearing account. In the event the cost of design, procurement of materials, and construction for a Work Order exceed the amount paid by Timnath at the initiation of the Work Order, Loveland will submit a change order for review and approval by Timnath, along with support showing the need for the change order, and Timnath shall pay the increased amount within 45 days of approval of the change order. If Timnath does not approve the change order, representatives of the Parties shall meet to resolve their differences over the change order and the work performed under the Work Order will be limited to the work that can be completed for the approved funds. In the event the cost of design, procurement of materials, and construction for a Work Order are less than the amount paid by Timnath at the initiation of the Work Order, Loveland will refund Timnath such excess funds within sixty (60) days of substantial completion of the Work Order along with any interest that has accrued in connection with the funds, if the funds have been invested in an interest-bearing account.

5. **Timing and Order of Construction.** Loveland shall have authority to make decisions about design, procurement of materials, construction, and delivery of Broadband Service, including the right to deny a request from Timnath that a new Work Order be initiated. Timnath, though, shall have authority to determine which neighborhoods and general areas of Timnath will receive priority in Loveland's performance of the Work under each Work Order. Each Work Order shall set forth the timeframe for completion of such Work Order, which may be extended by written agreement of the Parties. Loveland shall coordinate its Work with Timnath by providing Timnath with copies of design drawings and work schedules prior to commencement of construction in any new area. Timnath shall have ten (10) business days to comment on the proposed design and/or construction timeline, which comments shall be duly considered by Loveland. If the design or construction timeline is substantively changed, a revised copy shall be provided to Timnath.
6. **Costs.** Loveland shall be responsible to pay, using the Broadband Service Funding, any contractors or consultants who assist in designing or constructing the Broadband Network in Timnath. All amounts paid by Timnath for the Broadband Service Funding shall be restricted funds that may be used only in connection with the costs identified in a Work Order and its respective scope of work.
7. **Maintenance of Broadband Network.** Once the Broadband Network, or any portion thereof, is fully constructed, Loveland shall be responsible for the costs and performance of ongoing maintenance of the network.
8. **Services Provided to Town of Timnath Facilities.** Pursuant to a separate agreement that will be negotiated between Loveland and Timnath, Loveland will provide high-speed internet (1 Gbps or greater), managed, or other services to the town government of Timnath to serve its properties and facilities, upon Timnath's request. The Parties shall establish

market appropriate government services and pricing applicable to Timnath requests. Loveland will also establish bulk services and pricing to meet Timnath's low-bandwidth or otherwise identified needs. Timnath will pay a monthly fee applicable to the services that are provided.

9. **Service Guarantee.** Loveland shall ensure continuous availability of Broadband Service to any property which is fiber-enabled (i.e., connected for service whether or not the property is taking service) with Broadband Service Funding paid by Timnath for a twenty-five-year period to be calculated from the date the property is first fiber-enabled. In addition, Loveland shall allow new properties to connect for service during such period if active fiber runs through a public street adjacent to the property. These obligations shall survive termination of this Agreement. These obligations shall not remain in effect in the event Loveland is prohibited from providing Broadband Services to Timnath pursuant to any future law adopted by the state or federal government. These obligations also shall not remain in effect in the event Loveland has ceased broadband operations, unless this Agreement is assigned to a successor as provided below. Provided, however, that if Loveland ceases broadband operation, it shall either:
 - A. Assign all property and facilities funded by the Broadband Service Funding, as well as this Agreement, to a successor governmental entity with the capability of continuing to provide Broadband Service, with the consent of Timnath, which shall not be unreasonably withheld; or
 - B. Convey by bill of sale, free and clear of encumbrances without payment of additional consideration by Timnath, the Broadband Network constructed within Timnath's corporate limits that was funded by the Broadband Service Funding.
10. **Revenues.** Loveland shall be solely entitled to the revenues generated by the provision of the Broadband Services, except for any revenue sharing provided for herein.
11. **Gross Revenue Sharing Between Parties.** Where Loveland provides Broadband Service to a Service Area and the Broadband Network used to serve the Service Area has been at least 75% funded by Broadband Service Funding, Loveland shall distribute a portion of the Gross Revenue from such Service Area to Timnath in the following manner:
 - A. Beginning one (1) year after Loveland initiates Broadband Service to the Service Area (i.e. twelve (12) full months of Pulse service provided to any property within the Service Area, not calculated based on when the Service Area is fiber-enabled), Loveland will distribute **25% of its Gross Revenue from the area** to Timnath, on a quarterly basis.
 - B. "Gross Revenue" shall mean the revenue Loveland receives from the person for wired internet data service plans. Gross Revenue shall not include managed services including WiFi, voice (VoIP), TV services, or other non-wired internet data service packages. Gross Revenue shall not include any taxes, fees, or charges that Loveland

must remit to any regulatory or governmental body on the customer's behalf or on Pulse's own behalf.

- C. The City's obligation to share revenue with Timnath shall only apply to Broadband Service provided to properties in incorporated areas of Timnath as a result of and at the time of Timnath's funding provided under this Agreement and properties annexed into the Town of Timnath after the initial funding but prior to collection of the service fees.
 - D. Loveland's Gross Revenue sharing obligation under this Agreement shall in no way extend to revenues, facilities, goods or assets, that were funded by bond proceeds garnered by the City of Loveland and are subject to any bond covenant whatsoever (i.e., any revenues or assets associated with property within Loveland Power's electric service territory); provided that Loveland represents that it has not and shall not pledge any proceeds from broadband internet service provided to residents within Timnath.
12. **Service Drop Connections.** During the first five (5) years of service to a Service Area—to be calculated from the date that the first property in the Service Area is fiber-enabled—Timnath will fund service drop connections to premises if the take rate is 40% or less. If the take rate is greater than 40%, Loveland will fund service drop connections. After five (5) years of service to the Service Area, all service drop connections will be funded by Loveland.
13. **Ownership and Management of Broadband Services Facilities.** Loveland shall own and control the facilities it constructs or uses to provide Broadband Service in Timnath. Any issues that may arise in the construction and management of the Broadband Network shall remain entirely within Loveland's control and discretion. Service questions and calls shall be directed to Loveland. Timnath may notify Loveland of any known service problem, and the Parties shall work together in good faith to resolve it.
14. **Other Agreements.** Should Loveland use a portion of the Broadband Network constructed in the Town of Timnath and paid for by Broadband Service Funding to provide services to third parties, such as, but not limited to, leasing dark fiber, leasing conduit, or participating in small-cell projects where such services generate revenue, a separate agreement shall be negotiated and entered into between Loveland and Timnath that provides reasonable revenue to Timnath for its capital investment in such revenue-generating infrastructure.
15. **New Development.** Timnath has the option to provide funding for expansion of the Broadband Network to any new development within Timnath's corporate limits at its sole discretion, in which case such installation shall be added to a new Work Order.
16. **Marketing.** Timnath and Loveland will work to jointly develop brand standards and coordinated community outreach for the Broadband Service funded under this Agreement. Loveland will direct and control all customer marketing initiatives.

- 17. Permitting and Franchise Requirements.** Loveland's installation and maintenance activities remain subject to all applicable permitting requirements, including Timnath right-of-way rules. Any cable television service, as defined by C.R.S. § 29-27-102(2), that Loveland may offer to its customers shall be subject to any franchise requirement that may exist under Timnath's laws.
- 18. Records and Audits.** Loveland will maintain complete and accurate records of all charges incurred for the Work, in accordance with generally accepted accounting principles, for a period of thirty-six (36) months from the date of termination or completion of the Work. Timnath will have the right to inspect the Loveland's records relating to the Work at reasonable times and upon reasonable notice and to retain copies thereof. Such records will include: (i) the date(s) Work was performed; (ii) a description of the Work performed; (iii) names of the individuals or subcontractors performing the Work; (iv) hours worked; (v) billing or compensation rate for the Work; and (vi) all other direct expenditures allowable. In the event of a disagreement about the validity of any cost, the Parties agree to work in good faith to resolve such disagreement. While construction is active on any project described in each Work Order, Loveland shall provide monthly reporting of all expenditures and the construction status, including copies of contractor pay requests, on each Work Order, in a form agreeable to both Parties.
- 19. Procurement.** In procuring goods and services for the Work, Loveland shall comply with all applicable laws, rules, and regulations. Notwithstanding any other provision of this Agreement, Loveland shall retain full discretion and authority in determining the terms of bidding related to the Work, the project delivery method, the project design, the letting of contracts for construction, construction oversight, and budget management.
- 20. Compliance with Law.** Loveland shall be solely responsible for obtaining and maintaining any required permits, including Timnath right-of-way permits, and for complying with all applicable laws and regulations relating to the Work, including but not limited to safety, construction, easements, and employment laws and regulations.
- 21. Insurance.** Loveland shall obtain and keep in full force and effect general liability insurance or comparable self-insurance covering its actions and activities permitted under this Agreement in an amount at least equivalent to Loveland's liability under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. Loveland shall ensure that any contractor or subcontractor maintain all insurance customary for the completion of the Work as required by this Agreement, including without limitation general liability insurance, professional liability insurance (for design engineers), workers compensation insurance, auto liability insurance and builder's risk insurance (for the general contractor). Timnath shall be named as an additional insured on the engineer and general contractor's general liability insurance and auto liability insurance policies.
- 22. Loveland Liability.** Loveland shall be responsible for any and all claims, damages, liability and court awards, including costs and expenses, incurred as a result of any action or omission of its officers, employees, contractors, and agents, in connection with its performance under this Agreement.

23. Term and Termination.

- A. Effective Date. This Agreement shall be effective from the date first written above and shall not terminate unless as provided below.
- B. Termination for Convenience. Upon thirty (30) days written notice, Timnath may terminate this Agreement, in whole or in part, if it determines, in its sole discretion that termination is in Timnath's best interests. After notice of termination has been given, Loveland and all contractors or subcontractors shall stop Work on the cancellation date specified in the notice.
- C. Termination for Cause. Either Party may terminate this Agreement in the event the other Party is in default of its obligations under this Agreement and fails to substantially cure the default within thirty (30) days following written notice from the other Party; provided, however, that if such default by nature cannot reasonably be cured with due diligence within thirty (30) days, then the Party shall continue to diligently pursue a cure within sixty (60) days of receiving notice.
- D. Effect of Termination. In the event of termination, either for convenience or cause, Loveland will be compensated for the Work performed prior to the date of termination. Loveland will not be reimbursed for any anticipated work or profit. Timnath's obligation to pay Loveland for all Work performed shall survive termination of this Agreement; and Loveland's obligation to refund Timnath any Broadband Service Funding that has not been used for Work, shall also survive the termination of the Agreement. In spite of any termination, Loveland shall continue to own and maintain its Broadband Service Facilities that exist in Timnath as of the date of termination and provide Broadband Service to any property that is fiber-enabled as of the date of termination.

24. Assignment. The Parties shall not assign the right or responsibilities of this Agreement without written approval from the other party.

25. Notices. Written notices required under this Agreement and all other correspondence between the Parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested or (1) day after being sent by national overnight delivery provider, or as may be updated in writing provided according to this notice procedure.

If to Loveland: Briana Reed-Harmel
 Municipal Fiber Manager
 Loveland Pulse
 200 North Wilson Avenue
 Loveland, CO 80537
 Briana.Reed-Harmel@cityofloveland.org
 970-962-3592

With copies to: Loveland City Attorney's Office
Broadband Matters
500 East Third Street, Suite 330
Loveland, CO 80537

If to Timnath: Aaron Adams
Town Manager
Town of Timnath
4750 Signal Tree Drive
Timnath, CO 80547
aadam@timnathgov.com
970-224-3211

With copies to: Town Attorney
Town of Timnath
4750 Signal Tree Drive
Timnath, CO 80547

26. **Amendment.** Any amendments to this Agreement must be in writing signed by both Parties. Approval of amendments to this Agreement will be managed according to the respective approval policies of each Party. The Parties expressly agree to allow mutual administrative approval and signature in writing of amendments at any time in accordance with the Parties' administrative approval policies.

27. **General Terms.**

A. Subject to Appropriation: No Multiple Year Obligation. It is understood and agreed by the Parties that any obligation of Loveland or Timnath hereunder, whether direct or contingent, shall extend only to funds appropriated by the Parties' respective governing bodies and encumbered for the purpose of this Agreement. The Parties do not by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years. Likewise, this Agreement shall not create a multiple-fiscal year direct or indirect debt or financial obligation of either Loveland or Timnath.

B. Employee Status. All employees of each governmental entity who perform any services in relation to this Agreement shall remain the employees solely of the governmental entity employing them to perform such services and not of any other Party hereto. Neither Party shall obtain, by virtue of paying or being reimbursed for costs under this Agreement, any direct control over the management, scheduling or facilities of the other Party.

C. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver, by either Party, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.

D. Entire Agreement. This Agreement contains the entire agreement of the Parties relating to the subject matter hereof.

- E. No Third-Party Beneficiary. The Parties understand and expressly agree 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. Nothing contained in this Agreement shall give or allow any such claim or right of action by any third person. It is the express intention of the Parties that any person other than the signatories hereto receiving benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- F. Severability. In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.
- G. Headings. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.
- H. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado.
- I. Legal Constraints. The Parties recognize the legal constraints imposed upon them by the constitutions, statutes, and regulations of the State of Colorado and of the United States and imposed upon the Parties by their respective local laws, including, charters and local codes. Subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision in this Agreement to the contrary, in no event shall either of the Parties exercise any power or take any action which shall be prohibited by applicable law.
- J. Counterparts. This Agreement may be executed in separate counterparts, and the counterparts taken together shall constitute the whole of this Agreement.
- K. Electronic Signature. This Agreement may be executed by electronic signature.
- L. Recording. A copy of this Agreement shall be recorded in the real property records of the Larimer County Clerk and Recorder.

[Signature appear on the following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

City of Loveland, Colorado

By: Stephen Adams

Title: City Manager

Date: 12/14/2023

ATTEST:



Chad Thompson

Date: 12/14/23

Deputy City Clerk

APPROVED AS TO FORM:

[Signature]
Assistant City Attorney

Town of Timnath, Colorado

By: DocuSigned by: Aaron Adams

Title: Town Manager

Date: 11/21/2023

ATTEST:

DocuSigned by: Melissa Peters-Garcia

Date: 11/21/2023

Town Clerk

APPROVED AS TO FORM:

DocuSigned by: Carolyn Steff
Town Attorney

EXHIBIT A

*to Intergovernmental Agreement for Pulse Broadband Services in the Town of Timnath
Template Work Order*

WORK ORDER # ____
Dated ____, 20__

This Work Order is adopted by the City of Loveland (“Loveland”) and the Town of Timnath (“Timnath”) pursuant to that certain Intergovernmental Agreement for Pulse Broadband Services in the Town of Timnath, dated XX, XX, 2023 (“Agreement”). The terms and conditions of the Agreement are incorporated herein. In the event of a conflict between this Work Order, as defined in the Agreement, and the Agreement, the terms of the Agreement shall control. Upon execution, a copy of this Work Order shall be attached to and incorporated into the Agreement; however, the Parties will not be required to re-record the Agreement for each new Work Order.

Project Title: Timnath Broadband Network

Notice to Proceed and Commencement Date: _____

Completion Date for this Work Order: _____

Funding Phase of Work Order: _____

Description of Work:

Description of Service Area(s) to be provided Broadband Network in this Work Order, *see also attached map:*

Funding Amount for this Work Order: _____

Total Funding for all Work Orders under this Phase: _____

Total Funding for all Work Orders under the Agreement: _____

City of Loveland

By: _____
City Manager

Date: _____

Town of Timnath

By: _____
Town Manager

Date: _____