

**TOWN OF TIMNATH, COLORADO  
RESOLUTION NO. 26, SERIES 2024**

**A RESOLUTION APPROVING THE FIRST AMENDMENT TO  
INTERGOVERNMENTAL AGREEMENT FOR THE ASSESSMENT, COLLECTION,  
AND REMITTANCE OF EMERGENCY SERVICES IMPACT FEES FOR THE  
POUDRE VALLEY FIRE PROTECTION DISTRICT**

**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 Parties entered into that certain Intergovernmental Agreement for the Assessment, Collection, and Remittance of Emergency Services Impact Fees for the Poudre Valley Fire Protection District dated April 26, 2021 (the “Original IGA”), a copy of which is attached as **Exhibit A**; and

**WHEREAS**, in accordance with Paragraph 2(b) of the Original IGA and on November 14, 2023 the District’s Board of Directors (the “Board”) approved that certain 2023 Fire Impact Fee Nexus Study dated November 16, 2023, prepared by Economic & Planning Systems, Inc., EPS No. 233129 (the “Updated Nexus Study”); and

**WHEREAS**, after considering the recommendations set forth in the Updated Nexus Study, the Board passed a Resolution on March 6, 2024 approving an updated Impact Fee Schedule at a level no greater than necessary to defray the impacts of new development on the District’s Capital Facilities (the “Updated Fee Schedule”), and the Parties desire to amend the Original IGA to reflect the Updated Fee Schedule, as provided herein; and

**WHEREAS**, the Parties entered into the First Amendment to Intergovernmental Agreement for the Assessment, Collection, and Remittance of Emergency Services Impact Fees for the Poudre Valley Fire Protection District (the “**Amendment**”), a cop of which is attached as **Exhibit B**; 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.

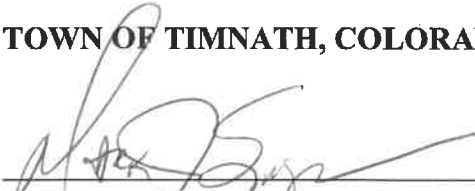
**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO AS FOLLOW:**

**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 MARCH 26, 2024.**

**TOWN OF TIMNATH, COLORADO**

  
\_\_\_\_\_  
Mark J. Soukup, Mayor

**ATTEST:**

  
\_\_\_\_\_

Milissa Peters-Garcia, CMC  
Town Clerk



**EXHIBIT A**

**THE ORIGINAL INTERGOVERNMENTAL AGREEMENT FOR THE ASSESSMENT,  
COLLECTION, AND REMITTANCE OF EMERGENCY SERVICES IMPACT FEES  
FOR THE POUFRE VALLEY FIRE PROTECTION DISTRICT**

**INTERGOVERNMENTAL AGREEMENT FOR THE ASSESSMENT,  
COLLECTION, AND REMITTANCE OF EMERGENCY SERVICES IMPACT FEES  
FOR THE POUVRE VALLEY FIRE PROTECTION DISTRICT**

This INTERGOVERNMENTAL AGREEMENT FOR THE ASSESSMENT, COLLECTION, AND REMITTANCE OF EMERGENCY SERVICES IMPACT FEES ("*Agreement*") is entered into by and between Town of Timnath ("*Town*") and the Poudre Valley Fire Protection District ("*District*"). The Town and the District are referred to collectively as the "*Parties*" or individually as a "*Party*."

**RECITALS**

**WHEREAS**, the Town is a home rule municipal corporation and political subdivision of the State of Colorado ("*State*"), and the District is a political subdivision of the State organized pursuant to the Special District Act, C.R.S. §§ 32-1-101 *et seq.*; and

**WHEREAS**, the District was organized to provide fire protection, rescue, and emergency services (collectively, "*Emergency Services*"), as well as other services including fire suppression, public education, hazardous materials, emergency medical, and ambulance services, to the citizens and property within its jurisdiction, and to individuals passing through its jurisdiction, either directly or through third-party providers. The District's jurisdiction encompasses property lying within incorporated portions of the Town; and

**WHEREAS**, pursuant to § 32-1-1002(1)(d.5), C.R.S., the District has authority to receive and spend impact fees or other similar development charges imposed pursuant to the provisions of, and for the purposes described in § 29-20-104.5, C.R.S. (the "*Impact Fee Act*"); and

**WHEREAS**, the District obtained an Impact Fee Study dated May 21, 2018, to evaluate the nexus between new development within the District's jurisdictional boundaries and the projected impact that such development has on the District's Capital Facilities ("*Nexus Study*"). The Nexus Study quantified the reasonable impacts of both new residential and non-residential development on the District's Capital Facilities; and

**WHEREAS**, on April 26, 2021, the District's Board of Directors ("*Board*") adopted a resolution approving an impact fee schedule at levels no greater than necessary to defray the impacts directly related to development within the District's jurisdiction as determined by the Nexus Study ("*Impact Fee Schedule*"). A copy of the approved Impact Fee Schedule is attached as *Attachment 1*; and

**WHEREAS**, in accordance with C.R.S. § 29-20-104.5(2)(c), the Parties desire to enter into this Agreement to define the District Impact Fee, and the details of receipt by the District, and collection, and remittance by the Town, all in accordance with the requirements of the Impact Fee Act.

**NOW, THEREFORE**, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

**AGREEMENT**

**1. Definitions.** In addition to the definitions provided elsewhere in this Agreement, the terms "*Development Permit*" and "*Capital Facility(ies)*" shall be defined as provided in C.R.S. §§ 29-20-103(1) and 29-20-104.5(4), respectively, including any amendments thereto. As a point of clarification, the term "*Development Permit*" shall also include building permits issued by the Town in the following instances: (a)

when a parcel of ground is improved and accepted by the Town; (b) for new commercial buildings and/or tenant finish; and (c) new residential dwelling units.

## **2. Establishment of District Impact Fee.**

a. The District has determined to charge an impact fee on new development that currently is located within both the incorporated portion of the Town and the District, or that in the future becomes located within the incorporated portion of the Town and the District, in accordance with the attached Impact Fee Schedule, subject to inflation as set forth herein ("*District Impact Fee*"). Pursuant to the Impact Fee Act, the Town has agreed to impose, collect and remit to the District the District Impact Fee. The District Impact Fee shall be collected from all new development for which a Development Permit application is submitted to the Town on or after June 1, 2021, provided, however, that the Town shall not be subject to the District Impact Fee for Town-owned developments. On January 1, 2022, and on January 1 of each year thereafter in which the District Impact Fee is in effect, the amount of the District Impact Fee per dwelling unit for residential development and/or per square feet for nonresidential development shall be automatically adjusted by the increase, if any, in the Denver-Boulder-Greeley Consumer Price Index for All Urban Consumers (CPI-U) over the preceding year.

b. At the District's sole expense, the District will update the Nexus Study no less frequently than every five (5) years ("*Updated Nexus Study*"). If the Updated Nexus Study recommends any changes to the Impact Fee Schedule, then the District Board may, after considering such recommendations, adopt a Resolution approving an updated Impact Fee Schedule at a level no greater than necessary to defray the impacts of new development on the District's Capital Facilities ("*Updated Impact Fee Schedule*"). The District shall thereafter submit to the Town a copy of: (i) the Updated Impact Fee Schedule; (ii) the Resolution adopting the Updated Impact Fee Schedule; and (iii) the Updated Nexus Study. Upon receipt and consideration of the foregoing, the Town may, in its discretion, adopt and impose the Updated Impact Fee Schedule as provided in the Impact Fee Act. In exercising its discretion, the Town may confer with the District with respect to the Updated Impact Fee Schedule, the Updated Nexus Study, or any other matter related thereto. Notwithstanding the foregoing, if the Updated Nexus Study recommends a decrease to all or any part of the Impact Fee Schedule, the Parties shall take the requisite actions necessary to implement the Updated Impact Fee Schedule to reflect the recommended decrease.

c. The Town retains the right to waive collection of the District Impact Fee on the development of low- or moderate-income housing or affordable employee housing as defined by the Town, as provided in C.R.S. § 29-20-104.5(5), and the Town retains the right to defer collection of the District Impact Fee until the issuance of a certificate of occupancy, as provided in C.R.S. § 29-20-104.5(6).

## **3. Procedures for Collection, and Remittance.**

a. As part of its Development Permit application process (inclusive of any building permit), the Town shall require the developer/builder/contractor of any proposed new development and new building within the District's jurisdictional boundaries to confer with the District regarding whether, under the Impact Fee Schedule (or any Updated Impact Fee Schedule), a District Impact Fee is owed and, if owed, the amount of the District Impact Fee. The developer and the District may mutually determine whether an in-kind contribution will be made by the developer to the District in lieu of paying all or any portion a District Impact Fee ("*In-Kind Contribution*"). The developer and the District shall sign an Impact Fee Form that is substantially the same as the form attached as Attachment 2, stating one of the following: (i) a District Impact Fee is not owed; (ii) a District Impact Fee is owed and the amount of the District Impact Fee; or, (iii) the developer will make an In-Kind Contribution as described in the Impact Fee Form.

b. The developer/builder/contractor shall submit the signed Impact Fee Form with the other documentation required by the Town as part of the Development Permit (and building permit) application process.

c. The Town shall promptly notify the District of the Town's final decision on whether to grant or deny the Development Permit application. If the Town denies the Development Permit application, the developer shall not be required to pay a District Impact Fee or make an In-Kind Contribution to the District. If the Town grants the application and issues a Development Permit or building permit, the Development Permit or building permit shall require the developer/builder/contractor to pay the District Impact Fee at time of building permit issuance or to make the In-Kind Contribution to the District. Issuance by the Town of a building permit in connection with the development shall be deemed a grant of the Development Permit application.

d. The Town shall collect any District Impact Fee owed by the developer/builder/contractor concurrently with the collection of any other Town impact fees collected in connection with the development at time of building permit issuance.

e. All fees collected by the Town shall be properly identified and promptly separated for accounting purposes and restricted for the purpose stated herein and held by the Town for the benefit of the District. The Town shall remit to the District, no less than quarterly, all funds it has collected and deposited into the account, less a three and one third percent (3.33%) administrative fee. The District shall be solely responsible for the funds it receives. Funds collected shall not constitute revenue of the Town under the provisions of Article X, Section 20 of the Colorado Constitution.

f. Any In-Kind Contribution owed by the developer shall be made directly to the District, and the District shall promptly notify the Town when it has accepted the In-Kind Contribution from the developer. The Town shall not issue a building permit in connection with the new development until the developer has paid the District Impact Fee to the Town, or the District has notified the Town that the District accepted the In-Kind Contribution from the developer. For purposes of this paragraph 3(f), if an In-Kind Contribution to be made by the developer constitutes construction of improvements, or the conveyance of any apparatus, equipment, or real property, then "acceptance" shall mean a written agreement between the District and the developer for such construction or conveyance.

g. The District shall not require a developer to provide any site-specific dedication or improvement to meet the same need for Capital Facilities for which the District Impact Fee is imposed. The District further agrees not to seek a District Impact Fee from a developer if the developer already is required to pay an impact fee or other similar development charge for another Capital Facility used to provide similar Emergency Services, or if the developer has voluntarily contributed money for such other Capital Facility.

h. The District shall account for all District Impact Fees in accordance with Part 8 of Article 1 of Title 29, Colorado Revised Statutes.

**4. Effective Date and Term.** This Agreement is effective as of the date the last Party signs this Agreement, and shall continue in effect until terminated in accordance with its terms.

**5. Indemnification:** The Town and District agree to cooperate with one another in the defense of any legal action that may be brought contesting the validity of this Agreement or the authority of either Party to perform the obligations and covenants contemplated herein. To the extent permitted by law, the District shall be financially responsible for defending such claim (whether filed against the Town, the District or both) and for the payment of any final monetary judgment entered against the Town in any such action.

Nothing contained in this Agreement shall constitute any waiver by the Town or the District of any defenses, immunities or limitations of liability under the Colorado Governmental Immunity Act or available under any other applicable Colorado or federal law. This section 5 shall survive termination of this Agreement and be enforceable until all claims are precluded by statutes of limitation.

**6. Termination.**

- a. The Parties may at any time mutually agree in writing to terminate this Agreement.
- b. The District may at any time terminate this Agreement upon thirty (30) calendar days' prior written notice to the Town.
- c. The Town may at any time provide written notice of intent to terminate this Agreement to the District; provided, that the Town shall not provide such written notice within the first five (5) years of this Agreement. Upon receipt of the written notice, the Town and the District, or their authorized representatives, shall meet to discuss, in good faith, whether any amendments may be made to this Agreement or to the District Impact Fee upon which the Parties would mutually agree to continue this Agreement. If the Parties are unable to agree upon any such amendments, then the Town's notice of termination shall be effective 120 days after the notice is given.

**7. Default.** If either Party defaults in its performance under this Agreement, the non-defaulting Party shall provide written notification to the defaulting Party of the default. The defaulting Party shall have the right to cure, or to make substantial efforts to cure, the default within thirty (30) calendar days after the non-defaulting Party's notice of default is given. If the defaulting Party fails to cure, or to make substantial efforts to cure, the default within the 30-day period, the non-defaulting Party, at its option, may immediately terminate this Agreement or may elect to treat this Agreement as being in full force and effect. If the non-defaulting Party elects to treat this Agreement as being in full force and effect, then the non-defaulting Party shall have the right to bring an action for any remedy available to such Party in equity or at law; provided that any remedy of damages shall be limited to actual moneys owed and accrued interest.

**8. Governmental Immunity.** Nothing in this Agreement shall be construed as a waiver of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by, the Parties under common law or pursuant to statute, including but not limited to the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.*

**9. Entire Agreement.** This Agreement is the entire agreement between the Parties with respect to the matters covered by it, and supersedes any prior understanding or agreements, oral or written, with respect thereto.

**10. Notices and Requests.** Any notice permitted or required by this Agreement shall be in writing and shall be hand-delivered or sent by certified or registered mail, postage prepaid, return receipt requested, to the following addresses. Notices are effective upon receipt.

Town of Timnath  
Attn: Town Manager  
4750 Signal Tree Drive  
Timnath, CO 80547

Poudre Valley Fire Protection District  
Attn: Fire Chief  
102 Remington St.  
Fort Collins, CO 80524

**11. Miscellaneous.** Colorado law governs this Agreement. Jurisdiction and venue shall lie exclusively in the Larimer County District Court. This Agreement may be amended only by a document signed

by the Parties. Course of performance, no matter how long, shall not constitute an amendment to this Agreement. If any provision of this Agreement is held invalid or unenforceable, all other provisions shall continue in full force and effect. Waiver of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties and their legal representatives and successors. Neither Party shall assign this Agreement. This Agreement is not intended to, and shall not, confer rights on any person or entity not named as a party to this Agreement. This Agreement may be executed in counterparts and by facsimile or electronic PDF, 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 Parties have executed this Agreement.

**TOWN OF TIMNATH**, a Home Rule  
municipal corporation of the State of Colorado

DocuSigned by:  
*Mark Soukup*  
By: \_\_\_\_\_  
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Mark J. Soukup  
Mayor, Town of Timnath, CO

Date: 4/14/2021

**POUDRE VALLEY FIRE PROTECTION  
DISTRICT**, a public entity of the State of Colorado

By: *[Signature]*  
\_\_\_\_\_   
James Gentry, Board Chairman

Date: 4/26/2021

ATTESTED:  
DocuSigned by:  
*Milissa Peters-Garcia*  
\_\_\_\_\_   
07A8AF3882114D7...  
Milissa Peters-Garcia, Town Clerk

ATTESTED:  
*[Signature]*  
\_\_\_\_\_   
Dave Pusey, Board Secretary

Attachment 1

**POUDRE VALLEY FIRE PROTECTION DISTRICT  
EMERGENCY SERVICES IMPACT FEE SCHEDULE  
Effective June 1, 2021**

	<b>One-time fee at time of building permit</b>
<b>Residential development per dwelling unit</b>	
Residential, up to 700 sq. ft.	\$466
Residential, 701-1,200 sq. ft.	\$631
Residential, 1,201-1,700 sq. ft.	\$686
Residential, 1,701-2,200 sq. ft.	\$697
Residential, over 2,200 sq. ft.	\$776
<b>Non-Residential, per 1,000 sq. ft.</b>	
Commercial	\$588
Office and Other Services	\$588
Industrial/Warehouse	\$137

No developer will be required to provide any site specific dedication or improvement to meet the same need for capital facilities for which an impact fee is imposed pursuant to this schedule, and no impact fee will be imposed on a developer if the developer already is required to pay an impact fee or other similar development charge for another Capital Facility used to provide similar Emergency Services, or if the developer has voluntarily made a commensurate contribution of money for such other Capital Facility.

Attachment 2

POUDRE VALLEY FIRE PROTECTION DISTRICT  
IMPACT FEE FORM

Developer/Builder/Contractor Information			
Company Name			State of Incorporation
Address			
Telephone		Fax	
Contact Person			
Name			Title
Telephone			Cell Phone
Email Address			
Development/Building Information			
Name of Development			Location (Address or Cross Streets)
Residential Units		Non-Residential Uses	
Single Family (\$ _____ per unit)		Commercial (\$ _____ per square foot)	
Multifamily (\$ _____ per unit)		Industrial (\$ _____ per square foot)	
Impact Fee			
Check one: <input type="checkbox"/> No impact fee owed or <input type="checkbox"/> Total Impact fee owed in the amount of, payable at time of building permit issuance on a per unit or square foot basis \$ _____			
If applicable: <input type="checkbox"/> An in-kind contribution will be made in lieu of paying all or a portion of an impact fee. Description of the in-kind contribution (attach additional information if necessary) and amount of impact fee off-set:			

The developer/builder/contractor must submit this signed Impact Fee Form with the other documentation required by the Town of Timnath as part of its development permit/building permit application process. If the Town denies the application, the developer/builder/contractor is not required to pay the Impact Fee or make an In-Kind Contribution to the District. If the Town grants the application and the application is approved by the applicable Town entity (Town Staff, Planning Commission, or Town Council) , the developer/builder/contractor must pay the Impact Fee at time of building permit issuance on a per unit or square foot basis and/or make the In-Kind Contribution, or enter into a written agreement with the District before no later than the same time as collection of any other Town impact fees collected in connection with the development, or, if no other Town impact fees will be collected, then prior to the issuance of a certificate of occupancy for any improvements within the development.

**DEVELOPER/BUILDER/CONTRACTOR:**

**POUDRE VALLEY FIRE PROTECTION DISTRICT:**

By: \_\_\_\_\_  
Date: \_\_\_\_\_

By:  \_\_\_\_\_, Fire Chief  
Date: \_\_\_\_\_

**EXHIBIT B**

**THE FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR THE  
ASSESSMENT, COLLECTION, AND REMITTANCE OF EMERGENCY SERVICES  
IMPACT FEES FOR THE POUFRE VALLEY FIRE PROTECTION DISTRICT**

**THE FIRST AMENDMENT TO  
INTERGOVERNMENTAL AGREEMENT FOR THE ASSESSMENT,  
COLLECTION, AND REMITTANCE OF EMERGENCY SERVICES IMPACT FEES  
FOR THE POUFRE VALLEY FIRE PROTECTION DISTRICT**

This FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR THE ASSESSMENT, COLLECTION, AND REMITTANCE OF EMERGENCY SERVICES IMPACT FEES FOR THE POUFRE VALLEY FIRE PROTECTION DISTRICT (“*Amendment*”) is entered into by and between the TOWN OF TIMNATH, a home rule municipality of the state of Colorado (“*Town*”) and the POUFRE VALLEY FIRE PROTECTION DISTRICT (“*District*”), a quasi-municipal corporation and political subdivision of the State of Colorado. The Town and the District are referred to collectively as the “*Parties*” or individually as a “*Party*”.

**I. RECITALS**

**WHEREAS**, the Parties entered into that certain Intergovernmental Agreement for the Assessment, Collection, and Remittance of Emergency Services Impact Fees for the Poudre Valley Fire Protection District dated April 26<sup>th</sup>, 2021 (“*Original IGA*”), a copy of which is attached as Attachment A; and

**WHEREAS**, in accordance with Paragraph 2(b) of the Original IGA and on November 14, 2023 the District’s Board of Directors (“*Board*”) approved that certain 2023 Fire Impact Fee Nexus Study, dated November 16, 2023, prepared by Economic & Planning Systems, Inc., EPS No. 233129 (“*Updated Nexus Study*”); and

**WHEREAS**, after considering the recommendations set forth in the Updated Nexus Study, the Board passed a Resolution on March 26, 2024 approving an updated Impact Fee Schedule at a level no greater than necessary to defray the impacts of new development on the District’s Capital Facilities (the “Updated Fee Schedule”), and the Parties desire to amend the Original IGA to reflect the Updated Fee Schedule provided herein.

**NOW, THEREFORE**, in consideration of the recitals and mutual covenants contained in the Original IGA and this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**II. AGREEMENT**

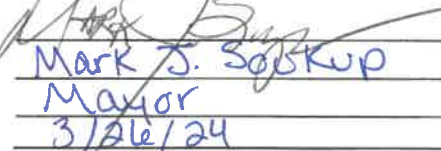
1. In accordance with Paragraph 2(b) of the Original IGA, the Updated Impact Fee Schedule (located on the following page) will be in full force and effect commencing April 1, 2024, and the Impact Fee Schedule set forth in Attachment 1 of the Original IGA, will be amended to reflect the updated fees. For the avoidance of doubt, the impact fees that apply pursuant to this Amendment are those fees marked as “Updated.”

<b>POUDRE VALLEY FIRE PROTECTION DISTRICT EMERGENCY SERVICES IMPACT FEE SCHEDULE – TOWN OF TIMNATH</b>			
<b>Land Use Type</b>	<b>Updated</b>	<b>Current</b>	<b>% Change from Current</b>
<b>Residential (per dwelling)</b>			
Up to 700 sq. ft.	\$557.01	\$466.00	19.5%
700 - 1,200 sq. ft.	\$843.47	\$631.00	33.7%
1,200 – 1,700 sq. ft.	\$946.91	\$686.00	38.0%
1,700 – 2,200 sq. ft.	\$1,018.53	\$697.00	46.1%
Over 2,200 sq. ft.	\$1,157.78	\$776.00	49.2%
<b>Nonresidential (per 1,000 sq. ft.)</b>			
Retail/Commercial	\$1,180.78	\$588.00	100.8%
Office	\$646.09	\$588.00	9.9%
Industrial	\$306.33	\$137.00	123.6%


1. All other provisions of the Agreement shall remain in full force and effect as written and are unaffected by this Amendment.

**IN WITNESS WHEREOF**, the Parties have executed this Amendment.

**TOWN OF TIMNATH**, a home rule municipality of the state of Colorado

By:   
 Name: Mark J. Sobkup  
 Title: Mayor  
 Date: 3/26/24

**POUDRE VALLEY FIRE PROTECTION DISTRICT**, a quasi-municipal corporation, and political subdivision of the State of Colorado

By:   
 Name: Martina Wilkinson  
 Title: Chair  
 Date: \_\_\_\_\_

**ATTACHMENT A**

**ORIGINAL IGA**

**INTERGOVERNMENTAL AGREEMENT FOR THE ASSESSMENT,  
COLLECTION, AND REMITTANCE OF EMERGENCY SERVICES IMPACT FEES  
FOR THE POUVRE VALLEY FIRE PROTECTION DISTRICT**

This INTERGOVERNMENTAL AGREEMENT FOR THE ASSESSMENT, COLLECTION, AND REMITTANCE OF EMERGENCY SERVICES IMPACT FEES ("*Agreement*") is entered into by and between Town of Timnath ("*Town*") and the Poudre Valley Fire Protection District ("*District*"). The Town and the District are referred to collectively as the "*Parties*" or individually as a "*Party*."

**RECITALS**

**WHEREAS**, the Town is a home rule municipal corporation and political subdivision of the State of Colorado ("*State*"), and the District is a political subdivision of the State organized pursuant to the Special District Act, C.R.S. §§ 32-1-101 *et seq.*; and

**WHEREAS**, the District was organized to provide fire protection, rescue, and emergency services (collectively, "*Emergency Services*"), as well as other services including fire suppression, public education, hazardous materials, emergency medical, and ambulance services, to the citizens and property within its jurisdiction, and to individuals passing through its jurisdiction, either directly or through third-party providers. The District's jurisdiction encompasses property lying within incorporated portions of the Town; and

**WHEREAS**, pursuant to § 32-1-1002(1)(d.5), C.R.S., the District has authority to receive and spend impact fees or other similar development charges imposed pursuant to the provisions of, and for the purposes described in § 29-20-104.5, C.R.S. (the "*Impact Fee Act*"); and

**WHEREAS**, the District obtained an Impact Fee Study dated May 21, 2018, to evaluate the nexus between new development within the District's jurisdictional boundaries and the projected impact that such development has on the District's Capital Facilities ("*Nexus Study*"). The Nexus Study quantified the reasonable impacts of both new residential and non-residential development on the District's Capital Facilities; and

**WHEREAS**, on April 26, 2021, the District's Board of Directors ("*Board*") adopted a resolution approving an impact fee schedule at levels no greater than necessary to defray the impacts directly related to development within the District's jurisdiction as determined by the Nexus Study ("*Impact Fee Schedule*"). A copy of the approved Impact Fee Schedule is attached as *Attachment 1*; and

**WHEREAS**, in accordance with C.R.S. § 29-20-104.5(2)(c), the Parties desire to enter into this Agreement to define the District Impact Fee, and the details of receipt by the District, and collection, and remittance by the Town, all in accordance with the requirements of the Impact Fee Act.

**NOW, THEREFORE**, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

**AGREEMENT**

**1. Definitions.** In addition to the definitions provided elsewhere in this Agreement, the terms "*Development Permit*" and "*Capital Facility(ies)*" shall be defined as provided in C.R.S. §§ 29-20-103(1) and 29-20-104.5(4), respectively, including any amendments thereto. As a point of clarification, the term "*Development Permit*" shall also include building permits issued by the Town in the following instances: (a)



when a parcel of ground is improved and accepted by the Town; (b) for new commercial buildings and/or tenant finish; and (c) new residential dwelling units.

## **2. Establishment of District Impact Fee.**

a. The District has determined to charge an impact fee on new development that currently is located within both the incorporated portion of the Town and the District, or that in the future becomes located within the incorporated portion of the Town and the District, in accordance with the attached Impact Fee Schedule, subject to inflation as set forth herein ("***District Impact Fee***"). Pursuant to the Impact Fee Act, the Town has agreed to impose, collect and remit to the District the District Impact Fee. The District Impact Fee shall be collected from all new development for which a Development Permit application is submitted to the Town on or after June 1, 2021, provided, however, that the Town shall not be subject to the District Impact Fee for Town-owned developments. On January 1, 2022, and on January 1 of each year thereafter in which the District Impact Fee is in effect, the amount of the District Impact Fee per dwelling unit for residential development and/or per square feet for nonresidential development shall be automatically adjusted by the increase, if any, in the Denver-Boulder-Greeley Consumer Price Index for All Urban Consumers (CPI-U) over the preceding year.

b. At the District's sole expense, the District will update the Nexus Study no less frequently than every five (5) years ("***Updated Nexus Study***"). If the Updated Nexus Study recommends any changes to the Impact Fee Schedule, then the District Board may, after considering such recommendations, adopt a Resolution approving an updated Impact Fee Schedule at a level no greater than necessary to defray the impacts of new development on the District's Capital Facilities ("***Updated Impact Fee Schedule***"). The District shall thereafter submit to the Town a copy of: (i) the Updated Impact Fee Schedule; (ii) the Resolution adopting the Updated Impact Fee Schedule; and (iii) the Updated Nexus Study. Upon receipt and consideration of the foregoing, the Town may, in its discretion, adopt and impose the Updated Impact Fee Schedule as provided in the Impact Fee Act. In exercising its discretion, the Town may confer with the District with respect to the Updated Impact Fee Schedule, the Updated Nexus Study, or any other matter related thereto. Notwithstanding the foregoing, if the Updated Nexus Study recommends a decrease to all or any part of the Impact Fee Schedule, the Parties shall take the requisite actions necessary to implement the Updated Impact Fee Schedule to reflect the recommended decrease.

c. The Town retains the right to waive collection of the District Impact Fee on the development of low- or moderate-income housing or affordable employee housing as defined by the Town, as provided in C.R.S. § 29-20-104.5(5), and the Town retains the right to defer collection of the District Impact Fee until the issuance of a certificate of occupancy, as provided in C.R.S. § 29-20-104.5(6).

## **3. Procedures for Collection, and Remittance.**

a. As part of its Development Permit application process (inclusive of any building permit), the Town shall require the developer/builder/contractor of any proposed new development and new building within the District's jurisdictional boundaries to confer with the District regarding whether, under the Impact Fee Schedule (or any Updated Impact Fee Schedule), a District Impact Fee is owed and, if owed, the amount of the District Impact Fee. The developer and the District may mutually determine whether an in-kind contribution will be made by the developer to the District in lieu of paying all or any portion a District Impact Fee ("***In-Kind Contribution***"). The developer and the District shall sign an Impact Fee Form that is substantially the same as the form attached as **Attachment 2**, stating one of the following: (i) a District Impact Fee is not owed; (ii) a District Impact Fee is owed and the amount of the District Impact Fee; or, (iii) the developer will make an In-Kind Contribution as described in the Impact Fee Form.

b. The developer/builder/contractor shall submit the signed Impact Fee Form with the other documentation required by the Town as part of the Development Permit (and building permit) application process.

c. The Town shall promptly notify the District of the Town's final decision on whether to grant or deny the Development Permit application. If the Town denies the Development Permit application, the developer shall not be required to pay a District Impact Fee or make an In-Kind Contribution to the District. If the Town grants the application and issues a Development Permit or building permit, the Development Permit or building permit shall require the developer/builder/contractor to pay the District Impact Fee at time of building permit issuance or to make the In-Kind Contribution to the District. Issuance by the Town of a building permit in connection with the development shall be deemed a grant of the Development Permit application.

d. The Town shall collect any District Impact Fee owed by the developer/builder/contractor concurrently with the collection of any other Town impact fees collected in connection with the development at time of building permit issuance.

e. All fees collected by the Town shall be properly identified and promptly separated for accounting purposes and restricted for the purpose stated herein and held by the Town for the benefit of the District. The Town shall remit to the District, no less than quarterly, all funds it has collected and deposited into the account, less a three and one third percent (3.33%) administrative fee. The District shall be solely responsible for the funds it receives. Funds collected shall not constitute revenue of the Town under the provisions of Article X, Section 20 of the Colorado Constitution.

f. Any In-Kind Contribution owed by the developer shall be made directly to the District, and the District shall promptly notify the Town when it has accepted the In-Kind Contribution from the developer. The Town shall not issue a building permit in connection with the new development until the developer has paid the District Impact Fee to the Town, or the District has notified the Town that the District accepted the In-Kind Contribution from the developer. For purposes of this paragraph 3(f), if an In-Kind Contribution to be made by the developer constitutes construction of improvements, or the conveyance of any apparatus, equipment, or real property, then "acceptance" shall mean a written agreement between the District and the developer for such construction or conveyance.

g. The District shall not require a developer to provide any site-specific dedication or improvement to meet the same need for Capital Facilities for which the District Impact Fee is imposed. The District further agrees not to seek a District Impact Fee from a developer if the developer already is required to pay an impact fee or other similar development charge for another Capital Facility used to provide similar Emergency Services, or if the developer has voluntarily contributed money for such other Capital Facility.

h. The District shall account for all District Impact Fees in accordance with Part 8 of Article 1 of Title 29, Colorado Revised Statutes.

**4. Effective Date and Term.** This Agreement is effective as of the date the last Party signs this Agreement, and shall continue in effect until terminated in accordance with its terms.

**5. Indemnification:** The Town and District agree to cooperate with one another in the defense of any legal action that may be brought contesting the validity of this Agreement or the authority of either Party to perform the obligations and covenants contemplated herein. To the extent permitted by law, the District shall be financially responsible for defending such claim (whether filed against the Town, the District or both) and for the payment of any final monetary judgment entered against the Town in any such action.

Nothing contained in this Agreement shall constitute any waiver by the Town or the District of any defenses, immunities or limitations of liability under the Colorado Governmental Immunity Act or available under any other applicable Colorado or federal law. This section 5 shall survive termination of this Agreement and be enforceable until all claims are precluded by statutes of limitation.

**6. Termination.**

- a. The Parties may at any time mutually agree in writing to terminate this Agreement.
- b. The District may at any time terminate this Agreement upon thirty (30) calendar days' prior written notice to the Town.
- c. The Town may at any time provide written notice of intent to terminate this Agreement to the District; provided, that the Town shall not provide such written notice within the first five (5) years of this Agreement. Upon receipt of the written notice, the Town and the District, or their authorized representatives, shall meet to discuss, in good faith, whether any amendments may be made to this Agreement or to the District Impact Fee upon which the Parties would mutually agree to continue this Agreement. If the Parties are unable to agree upon any such amendments, then the Town's notice of termination shall be effective 120 days after the notice is given.

**7. Default.** If either Party defaults in its performance under this Agreement, the non-defaulting Party shall provide written notification to the defaulting Party of the default. The defaulting Party shall have the right to cure, or to make substantial efforts to cure, the default within thirty (30) calendar days after the non-defaulting Party's notice of default is given. If the defaulting Party fails to cure, or to make substantial efforts to cure, the default within the 30-day period, the non-defaulting Party, at its option, may immediately terminate this Agreement or may elect to treat this Agreement as being in full force and effect. If the non-defaulting Party elects to treat this Agreement as being in full force and effect, then the non-defaulting Party shall have the right to bring an action for any remedy available to such Party in equity or at law; provided that any remedy of damages shall be limited to actual moneys owed and accrued interest.

**8. Governmental Immunity.** Nothing in this Agreement shall be construed as a waiver of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by, the Parties under common law or pursuant to statute, including but not limited to the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.*

**9. Entire Agreement.** This Agreement is the entire agreement between the Parties with respect to the matters covered by it, and supersedes any prior understanding or agreements, oral or written, with respect thereto.

**10. Notices and Requests.** Any notice permitted or required by this Agreement shall be in writing and shall be hand-delivered or sent by certified or registered mail, postage prepaid, return receipt requested, to the following addresses. Notices are effective upon receipt.

Town of Timnath  
Attn: Town Manager  
4750 Signal Tree Drive  
Timnath, CO 80547

Poudre Valley Fire Protection District  
Attn: Fire Chief  
102 Remington St.  
Fort Collins, CO 80524

**11. Miscellaneous.** Colorado law governs this Agreement. Jurisdiction and venue shall lie exclusively in the Larimer County District Court. This Agreement may be amended only by a document signed

by the Parties. Course of performance, no matter how long, shall not constitute an amendment to this Agreement. If any provision of this Agreement is held invalid or unenforceable, all other provisions shall continue in full force and effect. Waiver of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties and their legal representatives and successors. Neither Party shall assign this Agreement. This Agreement is not intended to, and shall not, confer rights on any person or entity not named as a party to this Agreement. This Agreement may be executed in counterparts and by facsimile or electronic PDF, 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 Parties have executed this Agreement.

**TOWN OF TIMNATH**, a Home Rule  
municipal corporation of the State of Colorado

**POUDRE VALLEY FIRE PROTECTION  
DISTRICT**, a public entity of the State of Colorado

DocuSigned by:  
By: Mark Soukup  
38DD94680F8C4E8...  
Mark J. Soukup  
Mayor, Town of Timnath, CO

By:   
James Gentry, Board Chairman

Date: 4/14/2021

Date: 4/26/2021

ATTESTED:  
DocuSigned by:  
Milissa Peters-Garcia  
67A6AF3B82114B7...  
Milissa Peters-Garcia, Town Clerk

ATTESTED:  
  
Dave Pusey, Board Secretary

Attachment 1

**POUDRE VALLEY FIRE PROTECTION DISTRICT  
EMERGENCY SERVICES IMPACT FEE SCHEDULE  
Effective June 1, 2021**

	<b>One-time fee at time of building permit</b>
<b>Residential development per dwelling unit</b>	
Residential, up to 700 sq. ft.	\$466
Residential, 701-1,200 sq. ft.	\$631
Residential, 1,201-1,700 sq. ft.	\$686
Residential, 1,701-2,200 sq. ft.	\$697
Residential, over 2,200 sq. ft.	\$776
<b>Non-Residential, per 1,000 sq. ft.</b>	
Commercial	\$588
Office and Other Services	\$588
Industrial/Warehouse	\$137

No developer will be required to provide any site specific dedication or improvement to meet the same need for capital facilities for which an impact fee is imposed pursuant to this schedule, and no impact fee will be imposed on a developer if the developer already is required to pay an impact fee or other similar development charge for another Capital Facility used to provide similar Emergency Services, or if the developer has voluntarily made a commensurate contribution of money for such other Capital Facility.

Attachment 2

**POUDRE VALLEY FIRE PROTECTION DISTRICT  
IMPACT FEE FORM**

<b>Developer/Builder/Contractor Information</b>			
Company Name		State of Incorporation	
Address			
Telephone		Fax	
<b>Contact Person</b>			
Name		Title	
Telephone		Cell Phone	
Email Address			
<b>Development/Building Information</b>			
Name of Development		Location (Address or Cross Streets)	
<b>Residential Units</b>		<b>Non-Residential Uses</b>	
Single Family (\$ _____ per unit)		Commercial (\$ _____ per square foot)	
Multifamily (\$ _____ per unit)		Industrial (\$ _____ per square foot)	
<b>Impact Fee</b>			
Check one: <input type="checkbox"/> No impact fee owed or <input type="checkbox"/> Total Impact fee owed in the amount of, payable at time of building permit issuance on a per unit or square foot basis \$ _____			
If applicable: <input type="checkbox"/> An in-kind contribution will be made in lieu of paying all or a portion of an impact fee. Description of the in-kind contribution (attach additional information if necessary) and amount of impact fee off-set: _____			

The developer/builder/contractor must submit this signed Impact Fee Form with the other documentation required by the Town of Timnath as part of its development permit/building permit application process. If the Town denies the application, the developer/builder/contractor is not required to pay the Impact Fee or make an In-Kind Contribution to the District. If the Town grants the application and the application is approved by the applicable Town entity (Town Staff, Planning Commission, or Town Council), the developer/builder/contractor must pay the Impact Fee at time of building permit issuance on a per unit or square foot basis and/or make the In-Kind Contribution, or enter into a written agreement with the District before no later than the same time as collection of any other Town impact fees collected in connection with the development, or, if no other Town impact fees will be collected, then prior to the issuance of a certificate of occupancy for any improvements within the development.

**DEVELOPER/BUILDER/CONTRACTOR:**

**POUDRE VALLEY FIRE PROTECTION DISTRICT:**

By: \_\_\_\_\_  
Date: \_\_\_\_\_

By:  \_\_\_\_\_, Fire Chief  
Date: \_\_\_\_\_