



## TOWN OF TIMNATH

### AGREEMENT FOR PAYMENT OF LAND USE APPLICATION REVIEW EXPENSES INCURRED BY THE TOWN

Regarding Project: \_\_\_\_\_ (the “Project”)

THIS AGREEMENT (this “**Agreement**”), made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by and between the TOWN OF TIMNATH, COLORADO, a Colorado municipal corporation (the “**Town**”), and \_\_\_\_\_, a Colorado \_\_\_\_\_ (the “**Applicant**”), [and \_\_\_\_\_ as owner (if different than Applicant)]. The Town and the Applicant are referred to herein individually as a “Party” and collectively as the “Parties.”

#### WITNESSETH

WHEREAS, the Applicant is seeking approvals by the Town pursuant to the Town of Timnath Land Use Code (the “**Code**”) for a certain property situated in the Counties of Larimer and/or Weld, State of Colorado, and legally described in **Exhibit A**, attached hereto and incorporated herein (the “**Property**”);

WHEREAS, the Town’s review process includes review of the Applicant’s proposed plans for the Property which identify land use, the location of parks, schools and open space dedications, general location of streets, and a review of utility service issues including the installation of public improvements, dedication of utility easements, confirmation of the availability of utility services and the method for developing and paying for such utility services;

WHEREAS, the Parties recognize that the fees as specified by the Code are not adequate to fully cover the Town’s expenses in processing the application(s);

WHEREAS, the Parties recognize that Section 16.1.11 of the Code requires the Applicant to pay for all such expenses incurred in processing the application(s) related to Property;

WHEREAS, the Parties recognize that the Town will incur expenses prior to the Applicant’s formal submittal of any development review proposal; and

WHEREAS, the Parties recognize that the Town will continue to incur expenses throughout the entire review process until either (i) abandonment of the process by either the Town or the Applicant or (ii) completion of the process through final acceptance.

NOW, THEREFORE, for and in consideration of the foregoing premises and of the mutual promises and conditions hereinafter contained, it is hereby agreed as follows:

#### AGREEMENT

1. Cost of the Project. Applicant shall pay all the costs of designing, constructing and installing the Project. The Applicant acknowledges that the Town utilizes third party consultants (the “Consultants”) and in house staff to review development proposals. The Applicant shall also reimburse the Town for its costs relating to the Project, including, but not limited to, all applicable Consultant engineering, legal, planner/consultant Town employee, legal publication, reproduction of materials, public hearing expenses, securing of permits and easements, construction observation, close-out/initial acceptance, final acceptance and the recording of documents, and administrative and other costs incurred by the Town (“Project Costs”). Reimbursement of the Project Costs is required regardless of the Project’s completion and regardless of the Town’s approval or disapproval of submissions by Applicant. Neither the Town’s review nor approval of any plans or Project facilities will constitute a representation regarding the quality of such plans or facilities. The Town will maintain separate accounts of all funds expended and fees and expenses incurred by the Town as a result of the development review of the Project.

a. Initial Deposit. Applicant shall deposit \$ [REDACTED] with the Town (the “Advanced Deposit”) concurrent with signing this Agreement. The amount of the Advanced Deposit will be based on the Town’s estimate of two (2) months of Town time and costs related to the Project.

b. Invoices. As the Town records all associated expenses (including Consultants’ invoices) it will forward a monthly invoice to the Applicant, including an indication balance remaining in the Deposit or balance due. The invoice will be in a form substantially similar to the invoice attached hereto as **Exhibit B**, and incorporated herein. Balance is due within ten (10) days of receipt of the invoice by the Applicant. In the event the Applicant fails to pay the balance due as submitted by the Town within sixty (60) days of the Town’s delivery of an invoice or if the past due balance exceeds more than fifty percent (50%) of the Initial Deposit, the Town may: (i) suspend all further review; (ii) cancel any public hearings scheduled by the Town with respect to the review process; and/or (iii) require an additional deposit (the Initial Deposit and any additional deposit(s) are collectively referred to as the “Deposit”). The Applicant will have ten (10) days after receipt of a request from the Town for additional deposit(s) to remit such amount to the Town, and the Town may decline to incur additional Project Costs unless and until such amount is paid.

c. Deposit Reduction. As the project advances, the Applicant may request a reduction in the Deposit held by the Town. Any reduction of the Deposit shall be in the sole discretion of the Town.

d. Payment of Balance Due at Termination. In the event the Town's review expenses are greater than the funds held by the Town at the time of its suspension of review, the Applicant agrees to reimburse to the Town, upon demand, such funds as are necessary to retire the balance due at the time of the Town's termination of the review.

e. Obligation to Pay Fees. The Town will make every effort to keep Project Costs to a customary and reasonable level, but the actual amount is subject to factors outside the control of the Town and the Consultants. Without limitation, factors such as the quality of materials submitted by the Applicant, input from review agencies, unforeseen problems or issues, and decisions by the Town Planning Commission and/or Town Council may affect charges.

f. Request for Revision of Fee Amounts. In the event that the Applicant believes any fees charged by the Town for its costs or for Consultants are not accurate or warranted, the Applicant may submit a request for review of such fees, including a specific explanation of the basis for alleging that the fees are in excess of what is appropriate. The Applicant may also request a meeting among the Applicant, the Town Manager and the Consultant(s) (if applicable). In the event the parties are not able to resolve the dispute, the Applicant and the Town may determine whether to proceed with the application.

g. Reimbursement of Balance. In the event there are funds remaining from the Deposit after approval of the Project by the Town and payment of all Project Costs and fees, or upon termination of any application pursuant to Section 3 below, the Town shall reimburse such balance to the Applicant.

2. Application Termination. Except where the law or an agreement with the Town provides otherwise, the Applicant may terminate its application at any time by giving written notice to the Town. The Town shall take all reasonable steps necessary to terminate the accrual of costs to the Applicant and file such notices as are required under the Town's annexation and development review ordinances. The Applicant shall pay all application costs incurred (including without limitation, those incurred by the Town to terminate the application) within ten (10) days of termination. In the event an application is terminated and the Applicant desires to resubmit the application for approval, this Agreement will be reinstated and made current prior to processing any application.

3. Collection of Fees and Costs. If the Applicant fails to pay the fees required herein when due, the Town may take those steps necessary and authorized by law to collect the fees due. The Town shall also be entitled to all court costs and attorney fees incurred in collection of the balance due, including interest on the amount due from its due date at the rate of 18% per annum. Unpaid balances for Project Costs will be grounds for the Town to withhold the issuance of permits that may be required for the

Project. All sums owed, including costs of collection, will be secured by a perpetual lien on the Property pursuant to C.R.S. § 32-1-1001(1)(j).

4. Assignment. If Applicant sells or conveys all or any portion of the project area, Applicant shall assign or transfer any and all of its interests, rights, or obligations under this Agreement to the purchaser.

5. Notice. All notices or billing invoices required under this Agreement shall be in writing and shall be delivered or sent by mail to the addresses of Parties herein set forth. All notices so given shall be considered effective on the date of delivery, or seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which further notices shall be sent.

Notice to Town:

Town of Timnath  
4750 Signal Tree Drive  
Timnath, Colorado 80547  
Attention:  
(970) 224-3211 (phone)  
(970) 224-3217 (fax)

With Copy to:

Town of Timnath  
4750 Signal Tree Drive  
Timnath, Colorado 80547  
Attention: Carolyn Steffl, Esq.  
(970) 224-3211 (phone)  
(970) 224-3217 (fax)

Notice to Applicant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(phone)  
(Fax)

6. Negotiated Provisions. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed substantially and materially to the preparation of this Agreement.

7. Severability. If any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of Parties shall be construed and enforced as if the Agreement did not contain the particular

part, term, or provision held to be invalid, and Parties shall cooperate to cure any such defect.

8. Execution and Counterparts. This Agreement may be executed and filed in any number of counterparts, all of which when taken together shall constitute the entire agreement of Parties. Signature pages may be removed from any counterpart and attached to another counterpart to constitute a single document.

9. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Should any Party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that exclusive venue of such suit or action shall be in Larimer County, Colorado.

*(Remainder of Page Intentionally Left Blank)*

**IN WITNESS WHEREOF**, the Town and the Applicant have caused this Agreement to be duly executed on the day and year first above written.

**APPLICANT:**

\_\_\_\_\_

a Colorado Corporation

\_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_

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

\_\_\_\_\_

**TOWN OF TIMNATH:**

\_\_\_\_\_

Aaron Adams, Town Manager

**ATTEST:**

\_\_\_\_\_

Milissa Peters-Garcia, Town Clerk

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

**EXHIBIT B**  
FORM OF INVOICE