

DATE: November 6, 2012
STAFF: Jon Haukaas
Ken Sampley

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

11

SUBJECT

Second Reading of Ordinance No. 110, 2012, Approving a Fourth Amendment to the Fort Collins-Timnath Intergovernmental Agreement Regarding Cooperation on Annexation, Growth Management, and Related Issues, Eliminating Original Terms Related to the Boxelder Overflow Project and Establishing the Terms of Cost Sharing for Design Engineering of Substituted Improvements in the Boxelder Basin.

EXECUTIVE SUMMARY

On February 17, 2009, the City of Fort Collins (City) and the Town of Timnath (Timnath) entered into an intergovernmental agreement (IGA) regarding annexations, growth management, and related issues. The IGA resolved certain differences that had arisen between the City and Timnath concerning a variety of planning and growth management issues. The IGA sets forth provisions for the funding, design and construction of the Boxelder Overflow Project. The IGA has been amended three times since for items such as the extension of deadlines for approval of the respective growth management areas and the deletion of all references to Timnath's possible purchase of the Vangbo property.

The parties have determined that development of the Boxelder Overflow Project originally contemplated by Timnath as described in the Intergovernmental Agreement is neither feasible nor desirable, and have further identified a mutually beneficial alternative approach to address flood impacts in the Boxelder Creek Basin as it impacts Timnath and Fort Collins, referred to as the Boxelder Creek Flood Mitigation Projects. In order to move forward cooperatively to further investigate, conceptually plan and preliminarily design the Boxelder Creek Flood Mitigation Projects, the parties desire to apply toward those Projects a portion of the funds previously paid into an escrow account by Fort Collins in accordance with Article 7 of the Intergovernmental Agreement. This Ordinance, unanimously adopted on First Reading on October 16, 2012, approves the Fourth Amendment to the Intergovernmental Agreement in order to clarify and document the City and Timnath's intentions and mutual rights and responsibilities with respect to the Boxelder Overflow Project and Boxelder Creek Flood Mitigation Projects.

Between First Reading and Second Reading the proposed Amendment has been revised to specifically allow for Timnath to carry out the funding of the Boxelder Creek Flood Mitigation Projects through the Timnath Development Agency.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. Copy of First Reading Agenda Item Summary - October 16, 2012 (w/o attachments)

DATE: October 16, 2012
STAFF: Jon Haukaas
Ken Sampley

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

14

SUBJECT

First Reading of Ordinance No. 110, 2012, Approving a Fourth Amendment to the Fort Collins-Timnath Intergovernmental Agreement Regarding Cooperation on Annexation, Growth Management, and Related Issues, Eliminating Original Terms Related to the Boxelder Overflow Project and Establishing the Terms of Cost Sharing for Design Engineering of Substituted Improvements in the Boxelder Basin.

EXECUTIVE SUMMARY

On February 17, 2009, the City of Fort Collins (City) and the Town of Timnath (Timnath) entered into an intergovernmental agreement (IGA) regarding annexations, growth management, and related issues. The IGA resolved certain differences that had arisen between the City and Timnath concerning a variety of planning and growth management issues. The IGA sets forth provisions for the funding, design and construction of the Boxelder Overflow Project. The IGA has been amended three times since for items such as the extension of deadlines for approval of the respective GMA's and the deletion of all references to Timnath's possible purchase of the Vangbo property.

The parties have determined that development of the Boxelder Overflow Project originally contemplated by Timnath as described in the Intergovernmental Agreement is neither feasible nor desirable, and have further identified a mutually beneficial alternative approach to address flood impacts in the Boxelder Creek Basin as it impacts Timnath and Fort Collins, referred to as the Boxelder Creek Flood Mitigation Projects. In order to move forward cooperatively to further investigate, conceptually plan and preliminarily design the Boxelder Creek Flood Mitigation Projects, the parties desire to apply toward those Projects a portion of the funds previously paid into an escrow account by Fort Collins in accordance with Article 7 of the Intergovernmental Agreement. The City and Timnath are entering into this Fourth Amendment to the Intergovernmental Agreement in order to clarify and document their intentions and mutual rights and responsibilities with respect to the Boxelder Overflow Project and Boxelder Creek Flood Mitigation Projects.

BACKGROUND / DISCUSSION

In February 2009, Council adopted Ordinance No. 011, 2009, approving an intergovernmental agreement between the City of Fort Collins and the Town of Timnath regarding Growth Management Areas (GMAs) for the two communities and associated issues authorizing the disposition of certain properties (the "Intergovernmental Agreement"). On February 17, 2009, the Intergovernmental Agreement was signed by both parties.

In February 2010, the City and Timnath approved a First Amendment to the IGA which extended deadlines imposed by the IGA to afford Timnath and Larimer County adequate time to resolve their differences regarding GMA concerns and come to agreement regarding the Timnath/Fort Collins GMA boundary. In addition, Timnath was granted an extension of Article 6 of the IGA regarding an option to purchase the Vangbo property. In February 2011, a Second Amendment to the IGA was approved to extend the deadline for the parties to amend their GMA boundaries and to delete all references to Timnath's possible purchase of the Vangbo property. A Third Amendment to the IGA was approved by both the City and Timnath in February 2012 agreeing to an additional one-year extension of the period of time (until February 12, 2013) within which the Fort Collins and Timnath GMA boundaries will be amended. Timnath has also agreed that, within the same period of time, it will actively pursue Larimer County approval of its own GMA with a western boundary that is consistent with the IGA.

At the time of execution of the Intergovernmental Agreement, Timnath intended to construct the Boxelder Overflow Project, as defined in the Intergovernmental Agreement. Article 7 of the IGA set forth the provisions for the project, the purpose of which was to mitigate existing and anticipated overflow from the Boxelder Creek which may have resulted from the blockage of two box culverts previously installed by the Colorado Department of Transportation under Interstate Highway 25.

Additionally, the Article sets the following conditions:

- (a) Grant of an easement for the project through the Arapaho Bends Natural Area
- (b) Agreement that Fort Collins will support Timnath's application to FEMA for the project
- (c) An agreement for 50% cost sharing with Fort Collins' Contribution not to exceed \$2,000,000
- (d) Establishment of a schedule for the appropriation of these funds by Fort Collins which were placed in escrow for the project and the methods for which the funds may be dispersed
- (e) Providing Timnath sole control and decision-making authority for the Project, and
- (f) Clarifying that nothing in this Section or elsewhere in the Agreement would in any way or manner be construed as an admission of liability by Fort Collins for any claims arising or related to any aspect of the project or conditions leading up to it.

The parties have since determined that development of the Boxelder Overflow Project originally contemplated by Timnath as described in the IGA is not feasible nor desirable, and have further identified a mutually beneficial alternative approach to address flood impacts in the Boxelder Creek Basin as it impacts Timnath and Fort Collins, referred to as the Boxelder Creek Flood Mitigation Projects. In order to move forward cooperatively to further investigate, conceptually plan and preliminarily design the Boxelder Creek Flood Mitigation Projects, the parties desire to apply toward those Projects a portion of the funds previously paid into an escrow account by Fort Collins in accordance with Article 7 of the Intergovernmental Agreement. The City and Timnath are entering into this Fourth Amendment to the Intergovernmental Agreement in order to clarify and document their intentions and mutual rights and responsibilities with respect to the Boxelder Overflow Project and Boxelder Creek Flood Mitigation Projects.

Accordingly, the parties have developed a general plan for storm drainage improvements to significantly reduce the 100-Year stormwater runoff within both the Boxelder Creek Drainage Basin and the Cooper Slough Drainage Basin that contribute to the flooding potential in Boxelder Creek, which is expected to include the following conceptual elements, referred to together as the Boxelder Creek Flood Mitigation Projects and are to be constructed concurrently:

- (a) East Side Detention Facility/Gray Lakes Reservoirs:
 - 1. Construction of an earthen embankment (dam) and un-gated outlet to create detention storage upstream of County Road 50.
- (b) Boxelder Creek and Boxelder Creek / Larimer and Weld Canal Crossing:
 - 1. Construction of a side spill weir crossing of the Larimer and Weld canal to allow Boxelder Creek storm runoff to continue downstream (south).
 - 2. Boxelder Creek drainageway improvements adjacent to and upstream (east) of Interstate Highway 25
- (c) Boxelder Creek and Prospect Road West of I-25:
 - 1. Flood conveyance, bed and bank stabilization, stream restoration and associated improvements on Boxelder Creek from I-25 to just downstream of Prospect Road; and
 - 2. Culvert/bridge crossing(s) of Prospect Road.
- (d) Cache la Poudre Overflow:
 - 1. Construction of a side-flow spillway structure on Boxelder Creek, just downstream of Prospect Road; and
 - 2. Construction of an outfall channel and swale to convey flows to an existing oxbow of the Poudre River.

FINANCIAL / ECONOMIC IMPACTS

Fort Collins agreed to appropriate and place into escrow funds totaling \$2,000,000 by the terms of the original IGA (i.e., the "Fort Collins Contribution" to the original project). To date, Fort Collins has placed \$1,800,000 into escrow in accordance with said provisions of Article 7. Fort Collins will place the remaining \$200,000 into escrow in February 2013 in accordance with the provisions and schedule outlined in the original Intergovernmental Agreement.

Accordingly, Fort Collins and Timnath agree that Timnath shall be entitled to a portion of said escrowed funds not to exceed \$250,000 to match payments by Timnath for up to 50% of the costs actually incurred by Timnath to proceed with the work described in Section 7.4. Disbursement in the amount of \$250,000 shall be available upon execution of this amendment by both Fort Collins and Timnath and shall be released to Timnath upon request from the escrow agent in order to allow Timnath to proceed with the work described in Section 7.4. The parties agree to direct the escrow agent managing said funds to disburse said funds in a manner consistent with this provision. The parties

acknowledge that said funds are intended as a match only to Timnath payments on invoices for the work described in Section 7.4, and any amounts not applied by Timnath for up to 50% of its costs for the same shall be returned to Fort Collins upon final completion of the work and final payment under the related contract for services with BBRSA. Fort Collins shall be entitled to review all invoices and other documentation related to said contract in order to verify the use of funds in accordance with this Amendment.

The remaining escrowed Fort Collins funds in the amount of \$1,750,000, together with such remaining amounts as are not disbursed as described above shall be applied toward the remaining design, engineering, right-of-way acquisition, permitting and construction of the components of the Boxelder Creek Flood Mitigation Projects, but only in the form of equal match to funds contributed by Timnath.

The total cost for construction of the Boxelder Creek Flood Mitigation Projects has not yet been determined, but it is understood that it may exceed the total amount of funds in escrow plus the matching funds provided by Timnath. Final determination of the design of the Boxelder Creek Flood Mitigation Projects, and the costs and cost-sharing associated with the completion of said Projects, shall be agreed upon under a future Amendment to this Agreement.

It is the intent of the parties that the performance of the requirements outlined in this IGA fully satisfies any obligation that Fort Collins may have to Timnath to contribute to the management of storm drainage waters flowing from Boxelder Creek insofar as such waters or the floodplain related thereto, may affect property within Timnath's municipal boundaries or within the TGMA.

ENVIRONMENTAL IMPACTS

The IGA noted that the location, size and impacts of any Boxelder stormwater improvements built on and in the vicinity of the Arapaho Bend Natural Area east of Interstate Highway 25 shall be minimized to the extent reasonably possible and that activity and improvements shall be sensitive to the natural features of the affected property. Any area impacted by construction activities shall be restored to pre-construction natural conditions to the extent reasonably possible, using native vegetation.

As a result of the replacement of the Boxelder Overflow Project originally identified in the IGA with the proposed Boxelder Creek Flood Mitigation projects, there will be a reduction in environmental impacts to Boxelder Creek, including the Arapaho Bend Natural Area. Construction of upstream stormwater improvements at the East Side Detention Facility and the Boxelder Creek/Larimer and Weld Canal Crossing will eliminate the need to construct a larger channel south of Prospect Road originally contemplated as part of the original Boxelder Overflow Project improvements.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

COPY

ORDINANCE NO. 110, 2012
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING A FOURTH AMENDMENT TO THE
FORT COLLINS-TIMNATH INTERGOVERNMENTAL AGREEMENT
REGARDING COOPERATION ON ANNEXATION, GROWTH MANAGEMENT,
AND RELATED ISSUES, ELIMINATING ORIGINAL TERMS RELATED TO
THE BOXELDER OVERFLOW PROJECT AND ESTABLISHING
THE TERMS OF COST SHARING FOR DESIGN ENGINEERING OF
SUBSTITUTED IMPROVEMENTS IN THE BOXELDER BASIN

WHEREAS, on February 17, 2009, Timnath and Fort Collins entered into an intergovernmental agreement relating to annexation, growth management and related issues, which agreement resolved certain differences that had arisen between the parties regarding a variety of planning and growth management issues (the “Intergovernmental Agreement”); and

WHEREAS, the parties have previously entered into three amendments modifying dates for completion of certain actions related to their growth management areas, and other matters addressed in the Intergovernmental Agreement; and

WHEREAS, in addition to addressing the above-described matters, the Intergovernmental Agreement also provided for funding assistance from Fort Collins in the form of payments to an escrow account to be disbursed in reimbursement to Timnath for a portion of Timnath’s costs in completing a project Timnath had planned to undertake in order to construct specified channels and other improvements to convey and redirect certain Boxelder Creek basin stormwater flows, referred to as the Boxelder Overflow Project; and

WHEREAS, the parties have determined that development of the Boxelder Overflow Project, as originally contemplated by Timnath and as described in the Intergovernmental Agreement, is neither feasible nor desirable, and have identified a mutually beneficial alternative approach for mitigating the risk of flooding in the Boxelder Creek Basin as it impacts Timnath and Fort Collins, referred to as the Boxelder Creek Flood Mitigation Projects; and

WHEREAS, the Boxelder Creek Flood Mitigation Projects would result in significantly reduced flood elevations along Cooper Slough in the City and in the vicinity of and below the Interstate 25 - Prospect Road interchange; and

WHEREAS, City Stormwater staff recommends that the City pursue the cooperative development of the Boxelder Creek Flood Mitigation Projects, in light of the benefits of that project for City Stormwater Utility and City Stormwater ratepayers; and

WHEREAS, in order to move forward cooperatively to further investigate, conceptually plan and preliminarily design the Boxelder Creek Flood Mitigation Projects, the parties desire to apply toward those Projects a portion of the funds previously paid by Fort Collins into an escrow account in accordance with Article 7 of the Intergovernmental Agreement; and

WHEREAS, accordingly, Timnath and Fort Collins staffs have negotiated modifications to the Intergovernmental Agreement in order to clarify and document the intentions and mutual rights and responsibilities of Timnath and Fort Collins with respect to the Boxelder Overflow Project and Boxelder Creek Flood Mitigation Projects; and

WHEREAS, the City Council has considered the Fourth Amendment to Intergovernmental Agreement, attached hereto as Exhibit A, and incorporated herein by this reference (the “Fourth Amendment”) and desires to authorize the execution of the Fourth Amendment so as to allow the shared funding of final design engineering for the Boxelder Creek Flood Mitigation Projects.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby finds and determines that the cooperative funding of the Boxelder Creek Flood Mitigation Projects will benefit and advance the interests of the City Stormwater Utility and City Stormwater ratepayers.

Section 2. That the Mayor is hereby authorized to enter into a Fourth Amendment to the Intergovernmental Agreement Regarding Cooperation on Annexation, Growth Management and Related Issues in substantially the form attached hereto as Exhibit “A”, with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purpose of this Ordinance.

Introduced, considered favorably on first reading, and ordered published this 16th day of October, A.D. 2012, and to be presented for final passage on the 6th day of November, A.D. 2012.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 6th day of November, A.D. 2012.

Mayor

ATTEST:

City Clerk

FOURTH AMENDMENT TO INTERGOVERNMENTAL AGREEMENT
(Regarding Cooperation on Annexation, Growth Management and Related Issues)

THIS FOURTH AMENDMENT TO INTERGOVERNMENTAL AGREEMENT (“Amendment”) is made and entered into this ____ day of November, 2012, by and between **THE TOWN OF TIMNATH, COLORADO**, a Colorado home rule town (hereinafter referred to as “Timnath”), and **THE CITY OF FORT COLLINS, COLORADO**, a Colorado home rule municipal corporation (hereinafter referred to as “Fort Collins”).

RECITALS

WHEREAS, on February 17, 2009, Timnath and Fort Collins entered into an intergovernmental agreement relating to annexation, growth management and related issues, which agreement resolved certain differences that had arisen between the parties regarding a variety of planning and growth management issues (the “Intergovernmental Agreement”); and

WHEREAS, on March 3, 2010, the parties executed a First Amendment to Intergovernmental Agreement which extended the periods of time within which Fort Collins was to amend the Fort Collins Growth Management Area (“FCGMA”) and Timnath was to provide written notice to Fort Collins of its intent to exercise its option to purchase the Vangbo Property, as those terms are defined in the Intergovernmental Agreement; and

WHEREAS, on February 2, 2011, the parties executed a Second Amendment to Intergovernmental Agreement, which extended the period of time within which Fort Collins was to amend the FCGMA; and

WHEREAS, on February 21, 2012, the parties executed a Third Amendment to Intergovernmental Agreement, which extended until February 12, 2013, the period of time within which both parties will amend the boundaries of their growth management areas; and

WHEREAS, the parties have determined that development of the Boxelder Overflow Project originally contemplated by Timnath as described in the Intergovernmental Agreement is not feasible nor desirable, and have further identified a mutually beneficial alternative approach to address flood impacts in the Boxelder Creek Basin as it impacts Timnath and Fort Collins, referred to as the Boxelder Creek Flood Mitigation Projects; and

WHEREAS, in order to move forward cooperatively to further investigate, conceptually plan and preliminarily design the Boxelder Creek Flood Mitigation Projects, the parties desire to apply toward those Projects a portion of the funds previously paid into an escrow account by Fort Collins in accordance with Article 7 of the Intergovernmental Agreement; and

WHEREAS, accordingly, the parties are entering into this Fourth Amendment to Intergovernmental Agreement so as to clarify and document their intentions and mutual rights and responsibilities with respect to the Boxelder Overflow Project and Boxelder Creek Flood Mitigation Projects.

NOW, THEREFORE, in consideration of the mutual promises of the parties and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Definitions Added. Article 1 of the Intergovernmental Agreement is hereby amended to add the following new definitions:

“Boxelder Basin Regional Stormwater Authority” or “BBRSA” shall mean the regional stormwater authority formed by agreement of the Board of Commissioners of Larimer County, Colorado, Fort Collins and the Town of Wellington, Colorado entitled Intergovernmental Agreement for Stormwater Cooperation and Management by and between them and dated August 20, 2008.

“Boxelder Basin Regional Stormwater Authority Master Plan” shall mean the master plan for improvements in the Boxelder Creek Stormwater Basin adopted by and incorporated by reference as part of the intergovernmental agreement that established the BBRSA.

“Boxelder Creek Flood Mitigation Projects” shall mean the general plan for storm drainage improvements to significantly reduce the 100-Year stormwater runoff within both the Boxelder Creek Drainage Basin and the Cooper Slough Drainage Basin that contribute to the flooding potential in Boxelder Creek, which is expected to include the conceptual elements identified in Section 7.1.

“East Side Detention Facility” shall mean that particular stormwater detention facility described in Subsection 7.2(a), and work required to design, engineer and construct the same.

2. Article 7 Superseded and Replaced. Article 7 of the Intergovernmental Agreement is hereby deleted and replaced in its entirety with the following:

ARTICLE 7
BOXELDER CREEK FLOOD MITIGATION PROJECTS

7.1 Boxelder Overflow Project not Feasible nor Desirable. At the time of execution of the Intergovernmental Agreement, Timnath intended to construct the Boxelder Overflow Project, as defined in the Intergovernmental Agreement. The parties agree and hereby acknowledge that the Boxelder Overflow Project is not feasible or desirable, based on additional review by the parties, and further agree that Timnath will not proceed with said Project. Article 7 of the Intergovernmental Agreement provided for execution of a mutually agreeable easement on Fort Collins property (the Boxelder Easement) if required for the Boxelder Overflow Project, and further required Fort Collins to pay the total amount Two Million Dollars (\$2,000,000) into escrow in specified installments, for use for reimbursement of Timnath for up to fifty percent of Timnath’s incurred costs in the design, engineering, right-of-way acquisition and construction of

the Boxelder Overflow Project. Fort Collins has placed funds in the total amount of One Million Eight Hundred Thousand Dollars (\$1,800,000) into escrow in accordance with said provisions of Article 7. Fort Collins will place the remaining Two Hundred Thousand Dollars (\$200,000) into escrow in February 2013 in accordance with the provisions and schedule outlined in the original Intergovernmental Agreement.

7.2 Boxelder Creek Flood Mitigation Projects. The parties agree and hereby acknowledge that it is in the best interest of both Fort Collins and Timnath to work cooperatively to design and construct projects along Boxelder Creek and its associated flow paths to mitigate the impacts of flooding for the mutual benefit of the parties as well as the region. Accordingly, the parties have developed a general plan for storm drainage improvements to significantly reduce the 100-Year stormwater runoff within both the Boxelder Creek Drainage Basin and the Cooper Slough Drainage Basin that contribute to the flooding potential in Boxelder Creek, which is expected to include the following conceptual elements, which are together referred to as the Boxelder Creek Flood Mitigation Projects and are to be constructed concurrently:

- (a) East Side Detention Facility/Gray Lakes Reservoirs:
 - 1. Construction of an earthen embankment (dam) and un-gated outlet to create detention storage upstream of County Road 50.
- (b) Boxelder Creek and Boxelder Creek / Larimer and Weld Canal Crossing:
 - 1. Construction of a side spill weir crossing of the Larimer and Weld canal to allow Boxelder Creek storm runoff to continue downstream (south).
 - 2. Boxelder Creek drainageway improvements adjacent to and upstream (east) of Interstate Highway 25
- (c) Boxelder Creek and Prospect Road West of I-25:
 - 1. Flood conveyance, bed and bank stabilization, stream restoration and associated improvements on Boxelder Creek from I-25 to just downstream of Prospect Road; and
 - 2. Culvert/bridge crossing(s) of Prospect Road.
- (d) Cache la Poudre Overflow:
 - 1. Construction of a side-flow spillway structure on Boxelder Creek, just downstream of Prospect Road; and
 - 2. Construction of an outfall channel and swale to convey flows to an existing oxbow of the Poudre River.

7.3 Cost Sharing.

(a) The parties agree and hereby acknowledge that it is in the best interests of both Fort Collins and Timnath to cooperate in making use of a portion of the funds deposited by Fort Collins under Article 7 of the Intergovernmental Agreement to match expenditures by Timnath for the design, engineering, and permitting of the Boxelder Creek Flood Mitigation Projects, as specified in this Section and in Section 7.4.

Accordingly, Fort Collins and Timnath agree that Timnath or the Timnath Development Authority (“TDA”) on behalf of Timnath, shall be entitled to a portion of said escrowed funds

not to exceed Two Hundred Fifty Thousand and 00/100th Dollars (\$250,000.00) to match payments by Timnath, or the TDA on behalf of Timnath, for up to fifty percent (50%) of the costs actually incurred by Timnath or the TDA to proceed with the work described in Section 7.4. Disbursement in the amount of Two Hundred Fifty Thousand and 00/100th Dollars (\$250,000.00) shall be available upon execution of this amendment by both Fort Collins and Timnath and shall be released to Timnath, or the TDA on behalf of Timnath, upon request from the escrow agent in order to allow Timnath or the TDA to proceed with the work described in Section 7.4. The parties agree to direct the escrow agent managing said funds to disburse said funds in a manner consistent with this provision. The parties acknowledge that said funds are intended as a match only to Timnath or TDA payments on invoices for the work described in Section 7.4, and any amounts not applied by Timnath or the TDA for up to fifty percent (50%) of costs for the same shall be returned to Fort Collins upon final completion of the work and final payment under the related contract for services with BBRSA. Fort Collins shall be entitled to review all invoices and other documentation related to said contract in order to verify the use of funds in accordance with this Amendment. Timnath acknowledges and agrees that, should Timnath arrange for performance by the TDA of any Timnath's obligations hereunder, Timnath shall continue to be responsible to Fort Collins for full and satisfactory completion of any of such obligations.

(b) It is the intent of the parties that the remaining escrowed Fort Collins funds in the amount of One Million Seven Hundred Fifty Thousand and 00/100th Dollars (\$1,750,000.00), together with such remaining amounts as are not disbursed under Section 7.3(a), shall be applied toward the remaining design, engineering, right-of-way acquisition, permitting and construction of the components of the Boxelder Creek Flood Mitigation Projects, but only in the form of equal match to funds contributed by Timnath, or the TDA on behalf of Timnath, for said purposes.

(c) The total cost for construction of the Boxelder Creek Flood Mitigation Projects has not yet been determined but it is understood that it may exceed the total amount of funds in escrow plus the matching funds provided by Timnath or the TDA on behalf of Timnath.

(d) Final determination of the design of the Boxelder Creek Flood Mitigation Projects, and the costs, and cost-sharing, associated with the completion of said Projects, shall be agreed upon under a future Amendment to this Agreement.

7.4 Timnath to Contract for Services. The Boxelder Creek Flood Mitigation Projects are included in the Boxelder Basin Regional Stormwater Authority Master Plan. BBRSA has initiated preliminary design engineering for said Projects, but continuation of this design engineering is necessary in order to determine actual design and related costs and to allow said Projects to proceed.

(a) Timnath, or the TDA on behalf of Timnath, shall contract with the BBRSA for the following services:

1. Preparation of the Feasibility Study and Final Application for a Colorado Water Conservation Board loan to BBRSA for the East Side Detention Facility which consists of the Gray Lakes Stormwater Detention Facility and accompanying improvements;
2. Complete the conceptual design of the Middle Basin (Boxelder Creek / Larimer and Weld Crossing), including modeling and collaboration with the Lake Canal Ditch Company to determine the acceptable crossing structure to accomplish the goals of the BBRSA Master Plan;
3. Initiate Final Design efforts (including Phase II of the geotechnical investigation - seismic site, seepage and stability analysis) for the East Side Detention Facility in order to prepare estimated costs for use in a loan application to the Colorado Water Conservation Board to be submitted no later than December 1, 2012; and
4. Initial coordination, meetings and preparation for United States Army Corps of Engineers permitting and coordination with the Colorado Office of the State Engineer.

(b) The work described in Subsection 7.4(a) is intended to allow BBRSA to maintain an efficient design, submittal and construction schedule focused on an expedited completion of the East Side Detention Facility in a timely manner with a targeted completion by the end of 2014.

(c) Timnath, or the TDA on behalf of Timnath, shall work with BBRSA and Fort Collins to develop an appropriate plan for payment to BBRSA of amounts required to complete the foregoing work.

(d) As part of its contractual arrangements with BBRSA, Timnath or the TDA on behalf of Timnath, shall require that BBRSA maintain appropriate documentation and make any reports, data or design deliverables produced for BBRSA available to the parties for review and use in connection with the Boxelder Creek Mitigation Projects and this Fourth Amendment to Intergovernmental Agreement.

7.5 Satisfaction of Obligations. It is the intent of the parties that the performance of the requirements of this Article 7 fully satisfies any obligation that Fort Collins may have to Timnath to contribute to the management of storm drainage waters flowing from Boxelder Creek insofar as such waters or the floodplain related thereto, may affect property within Timnath's municipal boundaries or within the TGMA. Accordingly, Timnath has released Fort Collins and its officers, employees, agents and assigns, from any and all claims or causes of action of any kind whatsoever for any monetary damages or for any other remedy at law or in equity arising from, connected with or in any way related to the flow, blockage or diversion of storm waters from Boxelder Creek, the installation, operation and maintenance of culverts and other storm water facilities related to that portion of I-25 that is adjacent to the TGMA, or the determination of rainfall standards for areas within Timnath's municipal boundaries or the TGMA, insofar as such claim or cause of action is based upon any acts or omission of Fort Collins or any of its officers, employees, agents or assigns, on or before the Effective Date.

The parties acknowledge and agree that, in the 1980's, at Fort Collins' request, the Colorado Department of Highways (CDOT) installed two additional box culverts under I-25 at a location that would, if the culverts were opened, allow a substantially greater volume of storm runoff to flow from Boxelder Creek under I-25 and into portions of the Fort Collins GMA and municipal limits and that such increased flows could do considerable damage to property within such area and that, in order to properly manage and contain such flows, extensive new storm water facilities must be constructed. Accordingly, both parties agree that no officer, employee, agent or assign, shall attempt, directly or indirectly, at any time after the execution of this Agreement, to persuade CDOT to take any action that would reasonably be expected to result in the opening of said culverts, until such time as the Boxelder Creek Flood Mitigation Projects, or other stormwater improvements satisfactory to the parties, are complete. In addition, if a third party takes, or attempts to take, any such action prior to the completion of said projects, Timnath agrees to support Fort Collins' opposition to such action by providing a letter to CDOT to that effect upon the request of Fort Collins.

7.6 No Admission of Liability. Nothing in this Article or elsewhere in this Agreement shall in any way or manner be construed as an admission of liability by Fort Collins or its officers or employees for any claim or damages arising from or in any way related to the lack of construction of the Boxelder Overflow Project, construction of the Boxelder Flood Mitigation Projects, the overflow of waters from Boxelder Creek, FEMA's designation of certain areas within the TGMA as being within a floodplain, or any related matters, nor shall anything herein be construed as a waiver of any defenses, limitations and immunities established pursuant to the Colorado Government Immunity Act (SS24-10-101, et seq. C.R.S.), the United States and Colorado Constitutions, or under the common law or laws of the State of Colorado or of the United States, including but not limited to Section 42 U.S.C. 1983.

3. No Further Modification. Except as expressly amended by this Amendment, the Intergovernmental Agreement is unmodified and shall continue in full force and effect.

4. Binding Agreement. Both Timnath and Fort Collins intend that this Amendment shall be binding upon them.

5. Amendments. This Amendment may only be amended, changed, modified or altered in writing, signed by both parties hereto.

6. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Colorado.

7. Jointly Drafted; Rules of Construction. The parties hereto agree that this Amendment was jointly drafted, and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

8. Defined Terms. Capitalized terms used in this Agreement but not otherwise defined herein shall have the meanings set forth in the Intergovernmental Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

THE TOWN OF TIMNATH, COLORADO

By: _____
Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM

Town Attorney

THE CITY OF FORT COLLINS, COLORADO

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM

City Attorney