

ORDINANCE NO. 108, 2021  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
APPROVING THE EIGHTH AMENDMENT TO THE FORT COLLINS-TIMNATH  
INTERGOVERNMENTAL AGREEMENT REGARDING COOPERATION ON  
ANNEXATION, GROWTH MANAGEMENT, AND RELATED ISSUES

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 are situated on opposite sides of Interstate 25 and are both committed to planned and orderly development; regulating the location and activities of development which may result in increased demand for services; providing for the orderly development and extension of urban services; to simplifying governmental structure when possible; promoting the economic vitality of both municipalities; protecting the environment; and raising revenue sufficient to meet the needs of their citizens; and

WHEREAS, because of the proximity of the City and the Town, the parties have agreed to work toward developing a comprehensive development plan for certain areas of mutual interest and concern within the immediate vicinity of I-25, the purpose of which plan would be to explore joint financing mechanisms for public improvements and potential revenue sharing alternatives within such areas; and

WHEREAS, the parties have previously executed First, Second, Third, Fourth, Fifth, Sixth, and Seventh Amendments to the Intergovernmental Agreement; and

WHEREAS, the Seventh Amendment added Section 4.3 to the Intergovernmental Agreement under which the City agreed to consider the disconnection of certain Poudre School District property located northwest of the intersection of East Prospect Road and Larimer County Road 5; and

WHEREAS, Poudre School District has submitted a disconnection application to the City for the Poudre School District property described in the Seventh Amendment including some additional abutting property obtained after the Seventh Amendment ("PSD Property") was executed; and

WHEREAS, City Council has approved the disconnection of the PSD Property conditioned upon Timnath's annexation of the PSD Property becoming effective upon disconnection and execution of an Eighth Amendment to the Intergovernmental Agreement memorializing certain terms related to the disconnection; and


WHEREAS, the City and Timnath now wish to execute the Eighth Amendment to the Intergovernmental Agreement to complete Timnath's annexation of the PSD Property despite its location within the City's Growth Management Area, to require Timnath's annexation of the PSD Property to be effective upon disconnection from the City, to memorialize Timnath's

agreement to maintain the disconnected portions of East Prospect Road and Larimer County Road 5, to provide for revenue sharing should the PSD Property ever be commercially developed, and to amend the City's and Timnath's growth management areas and work cooperatively to amend the respective Growth Management Areas changed by the disconnection and annexation with Larimer County; and

WHEREAS, execution of the Eighth Amendment is in the best interests of the citizens of Fort Collins.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Mayor is hereby authorized to enter into an Eighth 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 7th day of September, A.D. 2021, and to be presented for final passage on the 21st day of September, A.D. 2021.

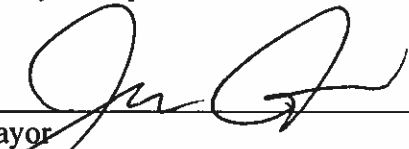
  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Interim City Clerk



Passed and adopted on final reading on the 21st day of September, A.D. 2021.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Interim City Clerk



# EXHIBIT "A"

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

**THIS EIGHTH AMENDMENT TO INTERGOVERNMENTAL AGREEMENT** ("Amendment") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, 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**, the parties are situated on opposite sides of Interstate 25 and are both committed to planned and orderly development; regulating the location and activities of development which may result in increased demand for services; providing for the orderly development and extension of urban services; to simplifying governmental structure when possible; promoting the economic vitality of both municipalities; protecting the environment; and raising revenue sufficient to meet the needs of their citizens; and

**WHEREAS**, the parties have previously executed First, Second, Third, Fourth, Fifth, Sixth, and Seventh Amendments to the Intergovernmental Agreement; and

**WHEREAS**, the *Seventh Amendment to Intergovernmental Agreement* added Article 4, Section 4.3, to the Intergovernmental Agreement regarding Fort Collins considering disconnection of certain Poudre School District property from Fort Collins located northwest of the intersection of East Prospect Road and Larimer County Road 5; and

**WHEREAS**, in 2021 Poudre School District platted the property subject to Article 4, Section 4.3, of the Intergovernmental Agreement, and additional property, (collectively the "PSD Property") by means of the *Prospect Middle/High School Subdivision Plat* recorded at Larimer County Clerk and Recorder Reception #20210025373; and

**WHEREAS**, Poudre School District is constructing a middle and high school on the PSD Property and has submitted an application for disconnection to Fort Collins; and

**WHEREAS**, Fort Collins and Timnath now wish to execute this Eighth Amendment to the Intergovernmental Agreement in order to establish certain expectations regarding the disconnection.

**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:

## EXHIBIT "A"

1. That Article 4, Section 4.3, is deleted and replaced in its entirety as follows:

4.3 Poudre School District Middle/High School. Poudre School District platted Lots 1-4 of its property located at the northwest corner of the intersection of East Prospect Road and Larimer County Road 5 by means of the *Prospect Middle/High School Subdivision Plat* recorded at Larimer County Clerk and Recorder Reception #20210025373. Poudre School district is constructing a middle and high school on said Lots 1-4 and has submitted its application for disconnection to Fort Collins and such disconnection includes portions of public road rights-of-way consisting of the entire width of East Prospect Road and Larimer County Road 5 abutting Lots 1 and 2 (collectively Lots 1-4 and the public road rights-of-way are the "PSD Disconnection Property") as shown on Exhibit "H" attached hereto and incorporated herein by reference. The City Council of Fort Collins has determined that disconnection of the PSD Disconnection Property will not prejudice the best interests of Fort Collins and desires to disconnect the PSD Disconnection Property and the parties agree to the following:

- (a) Timnath shall promptly annex the PSD Disconnection Property with such annexation effective upon the Fort Collins disconnection becoming effective so that there is no gap in time between disconnection and annexation. Timnath acknowledges that a condition for the disconnection is the execution of the Eighth Amendment to this Agreement.
  - (b) Upon annexation of the PSD Disconnection Property, Timnath agrees to assume sole responsibility and liability for the public road rights-of-way included in the PSD Disconnection Property, including without limitation, maintenance, signalization and traffic signage, and operations.
  - (c) In the event that any or all of the PSD Disconnection Property is commercially developed after disconnection and annexation, such development shall, by development agreement, be subject to revenue sharing in the same manner and under the same requirements as are set out in Section 4.1 above.
  - (d) The PSD Disconnection Property is currently within the FCGMA. Notwithstanding the limitation on Timnath annexing property within the FCGMA set forth in Section 2.2, Fort Collins agrees that Timnath may annex the PSD Disconnection Property.
  - (e) Exhibit 7, which depicts the TGMA and FCGMA boundaries between Timnath and Fort Collins as established in 2009 and subsequently amended, shall be further amended to include the PSD Disconnection Property upon annexation into Timnath subject to Larimer County agreement to such change as required pursuant to Section 2.1(c). Fort Collins and Timnath agree to cooperate in attempting to obtain Larimer County approval to amend the FCGMA and TGMA to include the PSD Disconnection Property within the TGMA.
2. No Further Modification. Except as expressly amended by this Amendment, the Intergovernmental Agreement is unmodified and shall continue in full force and effect.
  3. Binding Agreement. Both Timnath and Fort Collins intend that this Amendment shall be binding upon them.

EXHIBIT "A"

- 4. Amendments. This Amendment may only be amended, changed, modified or altered in writing, signed by both parties hereto.
- 5. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Colorado.
- 6. 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.
- 7. Defined Terms. Capitalized terms used in this Amendment but not otherwise defined herein shall have the meanings set forth in the Intergovernmental Agreement.

IN WITNESS WHEREOF, the parties have executed this Amendment 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

**EXHIBIT "A"**

**Attest:**

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**City Clerk**

**Approved as to Form:**

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**Assistant City Attorney**

