

**INTERGOVERNMENTAL AGREEMENT CONCERNING LAND DEDICATIONS OR
PAYMENTS IN LIEU OF LAND DEDICATIONS FOR SCHOOL PURPOSES**

THIS AGREEMENT is entered into by and between Poudre School District R-1 ("School District"), a political subdivision of the State of Colorado, and the Town of Wellington, Colorado ("Town"), a municipal corporation of the State of Colorado, to be effective as of the earlier of the date the agreement is adopted by both the Town and the School District or the 1st day of October, 2006 ("Effective Date").

RECITALS

A. Local governments are encouraged and authorized to cooperate or contract with other units of government, pursuant to §29-20-105, C.R.S., for the purpose of planning or regulating the development of land, including, but not limited to, the joint exercise of planning, zoning, subdivision, building, and related regulations.

B. Section 22-54-102(3)(a), C.R.S., authorizes local governments to cooperate with school districts through intergovernmental agreements to fund, construct, maintain, or manage capital construction projects, provided that funding is provided by a source of local government revenue that is otherwise authorized by law.

C. The growth in residential land development in the Town necessitates the building of additional school facilities and improvements to existing school facilities in order to accommodate the corresponding increases in the student population. Requiring, in connection with new construction within the Town, the dedication of sites and land areas for schools, or payments in-lieu thereof ("in-lieu payments") will help to meet such demand.

D. The School District has adopted certain planning standards and a methodology for calculating the nature and extent of the impact any proposed land-use approval by the Town will have on the adequacy of the District's school sites and the current and future residents thereof.

E. The Town is authorized to adopt appropriate ordinances and regulations for the purpose of promoting and preserving the public health, safety, and welfare of the citizens of the Town.

F. There is an essential nexus between the need for the dedication of school sites or in-lieu payments and the legitimate local governmental interest of promoting and preserving the public health, safety, and welfare of the citizens of the Town and the School District.

G. In order to provide adequate school facilities to serve new residential land developments, it is prudent that the School District and Town work together regarding school site land dedications and in-lieu payments in order to achieve cost-effective planning and to assure that the dedication and in-lieu payment requirements are roughly proportional to the impact of proposed uses on the Town and School District.

H. School land dedication or in-lieu payments serve to implement the Town's Comprehensive Plan by making provisions for public improvements that benefit the Town and by implementing those provisions of the Plan that are intended to ensure that new development does not negatively impact the provision of municipal services.

I. The Town, upon consideration of the effect of residential land developments and the ability of the School District to provide school facilities in the Town, has determined that it is in the best interests of the citizens of the Town to enter into an Intergovernmental Agreement with the School District for the purpose of providing for the dedication of land for school sites or payments in-lieu thereof as provided for in this Agreement.

J. The Town and School District desire to define their respective rights and obligations with respect to the planning, collection, and use of such land dedications and in-lieu payments.

AGREEMENT

NOW, THEREFORE, in consideration of the objectives, policies, and findings expressed in the Recitals to this Agreement, incorporated by this reference, and the mutual promises contained in this Agreement, the Town and School District agree as follows:

1. Definitions. Capitalized terms used herein and not otherwise defined shall have the meanings specified below:

"Building Permit Certificates" mean certificates to be issued by the School District in a form approved by the School District and the Town allowing issuance of a Residential Development Building Permit by the Town and evidencing land dedications or payment applicable fees in-lieu of dedication.

"Developer" means the person or entity seeking land-use approval from the Town and the party responsible for land dedication or in-lieu payments hereunder.

"Dwelling Unit" means a housekeeping unit designed and used for occupancy by a single individual or a family, containing cooking, living, sleeping, and sanitary facilities and having a separate entrance.

"Land Development Project" means any subdivision approval or any subsequent amendment to a previously approved subdivision that will result in new or additional Dwelling Units or a population density or population greater than that contemplated by the previously approved subdivision proposal. A Land Development Project shall not include any annexation or zoning or rezoning of property. If property is dedicated for schools or fees are paid in conjunction with a Land Development Project, further dedications or fees shall not be required except to the extent that residential densities are increased.

"Methodology" means the formulas, based upon the School Planning Standards, for calculating land dedication requirements and in-lieu payments, as shown on Exhibit B, attached hereto and incorporated by this reference.

"Residential Development" means new construction of any single or multiple family living unit in the Town, excluding additions to existing structures which do not obtain new utility service including a new electric or water meter or a new sewer tap and excluding additions which are not stand alone additions containing separate kitchen and restroom improvements.

"School Planning Standards" or "Standards" means the adopted School District land use standards set forth on Exhibit A, attached hereto and incorporated by this reference, that include student yields per dwelling unit for the three separate school levels, school facility enrollment capacities, school site acreage requirements, and the fair market value of real property that is located within the boundaries of both the Town and the School District.

2. Determination of Land Dedication or In-Lieu Payment Requirements.

a. The Town and School District find and agree that the current School Planning Standards in Exhibit A are reasonable, that there is an essential nexus between the dedication or payment contemplated and a legitimate local government interest, and that the dedication or payment is roughly proportional both in nature and extent to the impact of the proposed Land Development Project.

b. Prior to or at the time that any proposed plans are submitted to the Town for any Land Development Project, the Superintendent of the School District or a designee will meet with the Developer for the purpose of determining whether the School District desires the dedication of any land for schools within the Land Development Project, consistent with the School Planning Standards. If the School District requests a dedication of land that, based upon the application of the Standards and Methodology, results in a parcel that in itself would be of insufficient size for a school site, the School District agrees to discuss with the Developer the potential reservation by the Developer or acquisition by the School District of the balance of the property needed to provide an adequate site. If the School District determines that the dedication of sites and land areas is not feasible, is not consistent with School District facilities planning or usage, or is otherwise not in the best interests of the School District, the School District agrees to accept from the Developer an in-lieu payment as provided for in Paragraph 4 of this Agreement.

c. Upon formal submission of any annexation application or any proposed Land Development Project to the Town, the Town shall submit the Developer's proposal to the School District for its review, comments, and recommendations concerning the adequacy of school sites and facilities within the context of the proposed Land Development Project. The School District shall within 30 days of submission review the proposal and shall promptly submit

its comments and recommendations to the Town. The Town shall consider any comments made by the School District.

d. The School District shall make a determination concerning the impact of each Land Development Project upon the adequacy of school sites and facilities based upon the School Planning Standards which are in effect at the time the Developer's proposal is submitted to the School District for its review.

e. If the School District determines that it would be beneficial for a Developer to dedicate land, the School District may negotiate with the Developer for such dedication. If the Developer and the School District do not reach agreement within the thirty (30) days' time set for the School District to submit its comments to the Town, the Town, at its election, may act on the Land Development Project.

3. Conveyance of Dedicated Land.

a. If land is to be dedicated to the School District as part of the approval of any Land Development Project, the School District shall notify the Town in writing. Upon receipt of such notification, the Town shall thereafter accept the final map or plat for the Land Development Project, or any portion of it, for recording only if such map or plat provides for the contemporaneous dedication and conveyance of such land to the School District and the map or plat has been signed by the School District.

b. If land is to be reserved for future dedication to the School District as part of the approval of any Land Development Project, the School District shall so notify the Town in writing. Upon receipt of such notification, the Town shall thereafter accept the final plat for the Land Development Project, or any portion of it, for recording only if such plat shows the reservation of such land for such future dedication to the School District and such map or plat has been signed by the School District.

c. The School District may require the Developer to convey title to the dedicated site by general warranty deed, free and clear of all liens, encumbrances, and exceptions (except those approved in writing by the School District) including without limitation real property taxes, which will be prorated, and paid as of the date of conveyance. The School District may also require the Developer to provide a title insurance commitment and policy in an amount equal to the fair market value of the dedicated property.

d. If the School District and the Developer reach an agreement for the Developer to dedicate land to the School District, the School District shall provide the Developer with Building Permit Certificates which may be delivered to the Town for issuance of Residential Development Building Certificate(s) in accordance with Paragraph 5.

4. Assessment and Amount of In-Lieu Payment.

For all Residential Development in the Town within a subdivision that is approved by the Town's Board subsequent to September 1, 2006, fees shall be charged in accordance with Exhibit B to this Agreement. For all Residential Development in the Town within a subdivision that is approved by the Town's Board prior to September 1, 2006, fees shall, through September 1, 2010, be charged in accordance with Exhibit C to this Agreement. After September 1, 2010, unless the Methodology is otherwise modified, fees shall be charged in accordance with Exhibit B to this Agreement. The in-lieu payment shall be determined and paid to the School District, according to the Methodology then in effect, prior to issuance of a building permit or certificate of occupancy. Any in-lieu payment shall be paid to the School District at the School District's administration offices at Poudre School District, Johannsen Support Services Center, 2407 LaPorte Avenue, Fort Collins, CO 80521-2297; and the School District, at the time of payment, shall issue a Building Permit Certificate for issuance of Residential Development Building Certificate(s) in accordance with Paragraph 5.

5. Building Permit Certificates.

The Town and the School District shall agree to a form of a Building Permit Certificate to be issued by the School District at such time as called for by a land dedication agreement between the School District and the Developer or at such time as a cash in-lieu fee has been paid to the School District. The Building Permit Certificate shall be in a form agreed to by the School District and the Town. Separate Building Permit Certificates shall be issued based on the type of fee paid; for example, Category A and Category B permit fees as provided for on Exhibit B to this Agreement. If the fee amount is modified by the Town in the future as provided for by Paragraph 6(a), the School District shall issue new Building Permit Certificates evidencing payment of the modified fee. When new modified fees are approved, the School District shall exchange new Building Permit Certificates for pre-existing Building Permit Certificates; and, in making such exchange, shall, subject to the terms of any land dedication agreement, collect or remit any difference in the cash in-lieu fee between the new Building Permit Certificates and pre-existing Building Permit Certificates. The appropriate Building Permit Certificate shall be turned over to the Town at the time of a building permit application and the Town shall not issue any Residential Development building permit without the permit applicant providing the appropriate Building Permit Certificate from the School District.

6. Methodology for Assessing In-Lieu Payments.

a. The Methodology has been developed by the School District in a manner so as to fairly apportion the cost of acquiring school sites made necessary by Residential Development and to ensure that any in-lieu payments will be used for the purposes of school site acquisition within the senior high school feeder attendance area boundaries that include the Land Development Project for which the payment is being made and reimbursement of the School District's prior outlay within the last twelve (12) months for such purpose. All dedication requirements and in-lieu payments shall be based upon the School Planning Standards and the

Methodology approved by the Town, as the same may be amended from time to time in accordance with subparagraph (b) below, which are in effect at the time the Developer applies for land-use approval.

b. The School Planning Standards and Methodology adopted pursuant to the provisions of this Agreement shall be updated by the School District annually from the date of its submission to the Town. A copy of updated versions of Exhibits A and B shall be furnished to the Town within thirty (30) days after their adoption by the School District. The Town shall hold a public hearing before revising the in-lieu payments based upon any revisions to the School Planning Standards and/or the Methodology. The Town will thereafter approve or reject the updated Methodology and revised assessment figures. The last approved Methodology and assessment figures will be in effect until the revised Methodology is approved. Assessments associated with the newly approved Methodology shall be effective from the date of approval by the Town.

7. Collection, Deposit, and Expenditure of In-Lieu Payments.

a. All in-lieu payments shall be paid directly to the School District by the Developers and be properly identified and promptly deposited into a separate interest bearing account in the name of the School District, as authorized by §§24-75-601 to -605, C.R.S. The School District shall be the owner of the funds in the account. The School District shall be solely responsible for the fees it receives. No fees shall constitute revenue of the Town under the provisions of Article X, Section 20 of the Colorado Constitution.

b. The funds deposited into the account shall be earmarked and expended solely for the purposes of school site acquisition within the senior high school feeder attendance area boundaries that include the Land Development Project for which the payment was made, and/or reimbursement of the School District's prior outlays for such purposes. Subject to the time limitations contained in this Agreement, the time for, nature, method, and extent of such acquisition, development, and/or planning shall be within the sole discretion of the School District.

c. Except as otherwise provided in this Agreement, any in-lieu payments which have not been used for the purposes of school site acquisition and development, and/or capital facilities planning, within ten (10) years of the date of collection, shall be refunded with interest at the rate of 6 per cent (6%) per annum compounded annually to the person(s) shown by the records of the Larimer County Assessor as being the then-current owner(s) of the property which was subject to the payment (the "Property Owner"), as of the ten (10) year anniversary of the date of collection. Notice of such refund opportunity shall be mailed by the School District to the Property Owner's address as reflected in the records of the Larimer County Assessor at the end of the ten (10) year period. If the Property Owner does not file a written claim for such refund with the School District within ninety (90) days of the mailing of such notice, such refund shall be forfeited and shall revert to the School District to be utilized for school site acquisition, that will benefit the property(s) for which the payment was made.

d. The School District may request the Town to extend the ten (10) year period of time specified in the previous subsection. Such request shall be made at a public hearing before the Town, which may for good cause shown, and in its discretion, extend such period of time as the Town deems reasonable and necessary.

e. Throughout the initial two (2) year term of this Agreement, the Town and the School District anticipate that fees collected will be applied by the School District towards acquisition and development of an elementary school site within the Town, and/or reimbursement of the School District's prior outlays for such purposes. The School District anticipates the need for junior high and high school facilities to serve areas including the Town in the foreseeable future. The parties have discussed the need to negotiate amendments to this Agreement after its initial two (2) year term related to the School District's obligations surrounding the development of school sites and accounting for broader based needs associated with secondary school facilities. The timing of expenditures of those funds necessary to construct secondary school facilities may or may not allow for expenditure of funds within the timeframes provided for by this Agreement. The parties acknowledge that prior to the expiration of the initial two (2) year term of this Agreement it is intended that amendments will be made to subparagraphs c and d of this Section 7 to address the School District's longer term planning needs and the broader secondary financing issues and to provide for future development guidelines.

f. If in-lieu payments to the School District are based on the density of the development and development of the land is subsequently completed with a lower density, the Developer shall be entitled to receive a repayment based on the lower density and fee calculation which would have been applied at the time in-lieu payment was made.

8. Exemptions.

a. The following shall be exempted from land dedication requirements or in-lieu payments:

- i. Alteration or expansion of a Dwelling Unit;
- ii. Replacement of a Dwelling Unit;
- iii. Construction of an accessory building or structure;
- iv. Long-term care facilities or group homes as defined in the Town's ordinances;
- v. Land Development Projects (or portions thereof) that are subject to recorded covenants permanently restricting the age of all residents of all dwelling units to persons 62 years of age or older, such that the dwelling units may be classified as "housing for older persons"

pursuant to the Federal Fair Housing Amendments Act of 1988, 42 U.S.C. § 3607 (b) (2) (B);

- vi. Commercial developments; and
- vii. Qualified Housing authority or low-income Land Development Projects on which the Town cannot assess fees, unless the Developer consents to the fee assessment.

b. Unless exempt from fee assessments by law, any claim of exemption as provided in this Section 8 must be made no later than the approval of the Land Development Project. Any claim not so made may be deemed by the School District and the Town to have been waived by the Developer.

9. Annual Report, Accounting, and Audit.

a. The School District shall establish and maintain an accounting system to ensure that all in-lieu payments are expended in accordance with Section 7.b above.

b. The School District and the Town shall cause an audit to be performed annually of the in-lieu payments collected and expended in accordance with this Agreement. The audit shall be conducted in accordance with generally accepted accounting principles for governmental entities and may be part of any general audit annually conducted by the School District. A copy of said audit shall be furnished to the Town. The cost of the audit shall be paid from the School District's general fund.

c. At any time deemed necessary, the Town may request an accounting from the Superintendent of the School District concerning the expenditure of the in-lieu payments made to the School District.

10. Term.

The term of this Agreement shall commence on the date the Agreement is signed by both parties and continue for a period of two (2) years thereafter unless the Town repeals the implementing ordinance adopted by the Town concurrent with this Agreement. This Agreement shall automatically renew for additional two (2) year terms unless one party notifies the other of intent not to renew.

11. Miscellaneous.

a. Faith and Credit. Neither party shall extend the faith or credit of the other to any third person or entity.

b. Amendments. This Agreement may be amended only by mutual agreement of the parties and shall be evidenced by a written instrument authorized and executed

with the same formality as accorded this Agreement.

c. Notice. Any notice required by this Agreement shall be in writing. If such notice is hand delivered or personally served, it shall be effective immediately upon such delivery or service. If given by mail, it shall be certified with return receipt requested and addressed to the following addresses:

Town of Wellington
P.O. Box 127
3733 Cleveland Avenue
Wellington, Colorado 80549
Attention: Town Administrator

Poudre School District R-1
2407 LaPorte Avenue
Fort Collins, Colorado 80521
Attention: Superintendent of Schools

Notice given by mail shall be effective three (3) days after it is deposited in the United States mail depository correctly addressed and with sufficient postage for delivery.

d. Governing Law. This Agreement and the rights and obligations of the parties hereto shall be interpreted and construed in accordance with the laws of the State of Colorado.

e. Severability. If this Agreement, or any portion of it, is for any reason held invalid or unlawful by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of the Agreement.

f. Indemnification. The Town agrees to cooperate in the defense of any legal action that may be brought contesting the validity of this Agreement or the implementing ordinances. To the extent permitted by law, the School District shall be responsible for defending such claim (whether filed against the Town, the School 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 for the Town or the School District of the provisions of the Colorado Governmental Immunity Act or other applicable immunity defense. This provision shall survive termination of the Agreement and be enforceable until all claims are precluded by statutes of limitation.

g. Survival. Any provision or obligation of this Agreement, for the benefit of either party, that has not been fully performed or discharged at the time of termination shall survive such termination and continue to bind the party until the expiration of any applicable legal or equitable period of limitation.

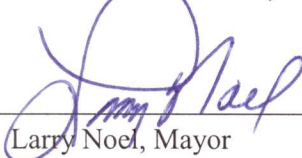
h. Financial Obligations. This Agreement shall not be deemed a pledge of the credit of the Town or the School District, or a collection or payment guarantee by the Town to the School District. Failure to collect fees shall not obligate the Town for fees not paid. Nothing in this Agreement shall be construed to create a multiple-fiscal year direct or indirect municipal or district debt or financial obligation.

i. No Third Party Beneficiaries. None of the terms, conditions, or covenants in this Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than the Town or the School District receiving services or benefits under this Agreement shall be only an incidental beneficiary.

j. Recording of Agreement. This Agreement shall be recorded with the Larimer County Clerk and Recorder.

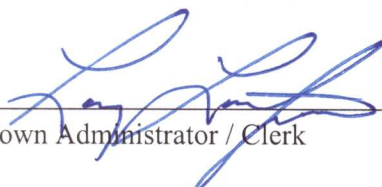
IN WITNESS WHEREOF, the parties hereto have executed this Agreement which shall be in full force and effect the day and year first above written.

TOWN OF WELLINGTON, COLORADO

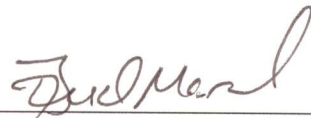
By 
Larry Noel, Mayor

Date

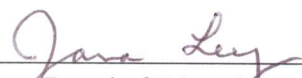
ATTEST:


Town Administrator / Clerk

APPROVED AS TO LEGAL FORM:

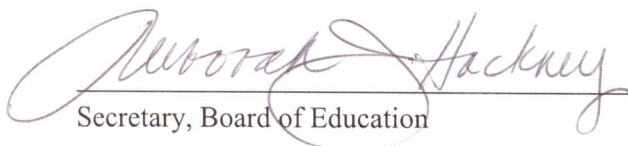

Town Attorney

POUDRE SCHOOL DISTRICT R-1

By 
President, Board of Education

Date

ATTEST:


Secretary, Board of Education

APPROVED AS TO LEGAL FORM:



School District Attorney

Exhibit A

Poudre School District

School District Planning Standards

i. Student Yield Per Dwelling Unit¹

	Category A <i>1 to 4 attached dwelling units</i>	Category B <i>5 or more attached dwelling units</i>
Elementary School	0.35	½ Category A
Middle School	0.10	½ Category A
High School	0.09	½ Category A
Total	0.54 students	½ Category A

ii. School Facility Enrollment Capacities²

Elementary School	525 students
Junior High School	750 students
High School	1,800 students

iii. School Site Acreage Requirements²

Elementary School	15 acres
Middle School	30 acres
High School	80 acres

iv. Developed Land Value for 2006³

\$100,000

¹Average student yields for elementary, junior high school, and high school based on information collected by Western Demographics, Inc. Includes all residential dwelling types within the School District.

²Based on Poudre School District Site Selection Criteria.

³Average land value based on report prepared by Shannon and Associates dated March 14, 2006. Adjustments to occur every 2 years in the even year based on changes to the Larimer County Assessor's "Residential Lot Classification".

Exhibit B

Poudre School District Methodology

Impact fees for Properties Subdivided subsequent to September 1, 2006

Based on the School District Planning Standards contained in Exhibit A, calculation of land dedication or in-lieu payments uses the following procedures:

1. The student yield is determined by the number of attached dwelling units.
(e.g. *Category A, Elementary School = 0.35*).
2. The amount of land required per student is calculated by dividing the acreage by the capacity.
(e.g. *Elementary School = 15 acres / 525 students = 0.029*).
3. The acreage per dwelling unit is determined by multiplying the student yield by the per student land requirement.
(e.g. *0.35 yield x 0.029 acres = 0.010*)
4. To convert the land dedication requirement into in-lieu payments, the acreage per dwelling unit is multiplied by the developed land value.
(e.g. *0.010 acres x \$100,000 = \$1,000.00*)

Summary

School District

The total land dedication or in-lieu payment per dwelling unit for properties subdivided subsequent to September 1, 2006 and, unless otherwise modified for all properties subsequent to September 1, 2010 is:

	Category A <i>1 to 4 attached units</i>		Category B <i>5 or more attached units</i>	
	<u>Land</u>	<u>PILO</u> ¹	<u>Land</u>	<u>PILO</u> ¹
Elementary School	0.0100 acres	\$ 1,000	0.005 acres	\$500
Middle School	0.0040 acres	\$ 400	0.002 acres	\$200
High School	0.0040 acres	\$ 400	0.002 acres	\$200
Total	0.0180 acres	\$1,800	0.009 acres	\$900

To determine the land or in-lieu payments for a proposed residential development, the per dwelling unit totals above would be multiplied by the total number of dwelling units in the development.

(e.g. *300 single family units = 0.0180 x 300 = 5.4 acre dedication or
\$1,800 x 300 = \$540,000 PILO*)

¹ PILO means "payment-in-lieu-of" land dedication

Exhibit C

Reduced Payment-In-Lieu-of Fees for Land Dedication Phase-In Period For Properties Subdivided Prior to September 1, 2006

Based on the School District Planning Standards contained in Exhibit A and the Methodology for assessing School District PILO Land Dedication Fees as set forth on Exhibit B, and to limit impacts on properties subdivided in the Town of Wellington, the Town will impose reduced fees, with a six (6) month phase-in period, on building permits issued for lots subdivided by September 1, 2006, as follows:

Summary

The total land dedication or in-lieu payment per dwelling unit is: **The reduced and phased-in fee shall be charged through August 31, 2010, at which time the Town of Wellington shall review the fee amount, make any necessary adjustments, and assess accordingly.**

		<i>1 to 4 unit attached units</i>	<i>5 or more attached units</i>
September 1, 2006	to	December 31, 2006	
		\$500.00	\$250.00
January 1, 2007	to	March 31, 2007	
		\$750.00	\$375.00
April 1, 2007	to	August 31, 2010	
		\$1,000.00	\$500.00

Subject to the Town's future modification of fees, the Reduced fee shall be charged through August 31, 2010 at which time all fees shall be assessed according to Exhibit B.