

713-11

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

THIS AGREEMENT is entered into by and between the Poudre School District R-1 ("School District"), a political subdivision of the State of Colorado, and the Town of Windsor, Colorado ("Town"), a municipal corporation of the State of Colorado, to be effective as of the 1<sup>st</sup> day of December, 1999 ("Effective Date").

**RECITALS**

- A. Local governments are encouraged and authorized to cooperate or contract with other units of government, pursuant to section 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/or 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 school sites for the School District and the 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 imperative that the School District be consulted regarding land dedication or in-lieu payments for school sites in order to achieve rational and cost-effective planning and to assure that the dedication or in-lieu payment requirements are roughly proportional to the impact of the proposed use on the Town and School District.

II. School land dedication or in-lieu payments serve to implement the Town's Comprehensive Plan, by making provisions for public improvements in a manner appropriate for a modern, efficiently functioning 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 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:

"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" or "Project" means any proposed 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.

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



"School Planning Standards" or "Standards" means the adopted School District land-use standards set forth on Exhibit B, 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 B 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 annexation or 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 Project, consistent with the School Planning Standards. In the event 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:

i. the potential reservation by the Developer or acquisition by the School District of the balance of the property needed to provide an adequate site; or

ii. an in-lieu payment as provided in this Agreement in the event the dedication of sites and land areas is not deemed feasible or in the best interests of the School District.

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 promptly review the proposal and shall promptly submit its comments and recommendations to the Town.

d. The School District shall make a determination concerning the impact of the 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. Upon receipt of the School District's determination as to whether land shall be dedicated, the Town shall, to the extent permitted by law, implement said determination as provided in subsection (f) below.

f. The Town agrees that as a condition of final approval of a subdivision plat for a Land Development Project, it will: (i) require proof of the dedication of land or the appropriate reservation of land for future dedication to the School District in accordance with Section 3 below, or (ii) require proof that the cash-in-lieu payment, as described in paragraph 4 below, has been paid to and received by the School District. The Superintendent of the School District, or the Superintendent's designee, shall provide such proof in a timely manner to the clerk of the Town. This requirement shall apply to each Land Development Project for which application is made on or after the effective date of this Agreement, subject only to the exemptions contained in Section 7 below.

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 plat for the Land Development Project, or any portion of it, for recording only if such plat provides for the contemporaneous dedication and conveyance of such land to 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.

c. Dedication of the reserved site shall occur no later than the date of final approval of the Land Development Project. Prior to the issuance of the first residential building permit for the Land Development Project, the dedicated site shall have overlot grading, direct access to a publicly dedicated street improved to Town standards, and utilities stubbed to the site. The School District shall promptly certify to the Town in writing that the dedication has been made. In the event that the School District determines, in its sole discretion, that the dedication of a reserved site is necessary prior to the issuance of any building permit for the Project within which such site is located, the School District shall so notify the person(s) shown by the records of the Larimer County Assessor as being the then current owner(s) of such site. Said notice shall be sent by certified mail, return receipt requested. Within 60 days of the mailing of said notice, the reserved property that is the subject of the mailing shall be dedicated to the School District by the owner(s) thereof.

d. Title to the dedicated site shall be conveyed to the School District 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 Developer shall provide a title insurance commitment and policy in an amount equal to the fair market value of the dedicated property.

4. Assessment and Amount of In-Lieu Payment.

In the event that the School District determines, under Section 2. above, that the dedication of land with respect to a particular Land Development Project would not further the planning objectives of the School District, either because the parcel that could be required to be dedicated would be of insufficient size for a school site or because the location of the dedicated site would be inappropriate, then the amount of the in-lieu payment shall be determined and paid to the School District, according to the Methodology then in effect, prior to approval and recording of the final plat for the Land Development Project. In the event the Developer obtains approval from the Town for the phasing of the Land Development Project that results in separate filings and final plats for each phase, the Developer may defer the payment of the in-lieu payment until the recording of the final plat for each phase; provided, however, that in such case the amount of the payment shall be based upon the School Planning Standards and Methodology in effect at the time of the approval of each phase.

5. Methodology for Assessing In-Lieu Payments

a. The parties agree that the Methodology has been developed 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 and development and capital facilities planning within the senior high school feeder attendance area boundaries that include the Land Development Project for which the payment is being made. All dedication requirements and in-lieu payments shall be based upon the School Planning Standards and the Methodology, 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 annually from the date of its submission to the Town. A copy of updated versions of Exhibits A and B, reflecting such changes, shall be furnished to the Town within 30 days after its 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.

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

a. All in-lieu payments paid to the School District shall be properly identified and promptly deposited into a separate interest bearing account in the name of the School District authorized by sections 24-75-601 to -605, C.R.S. The School District shall be the owner of the funds in the account.

b. The funds deposited into the account shall be earmarked and expended solely for the purposes of school site acquisition and development and capital facilities planning within the senior high school feeder attendance area boundaries that include the Land Development Project for which the payment was made. Subject to the time limitations contained in this Agreement, the time for, nature, method, and extent of such planning or development 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 capital facilities planning within ten years of the date of collection shall be refunded, with interest at the rate of 6 percent 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-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-year period. If the Property Owner does not file a written claim for such refund with the School District within 90 days of the mailing of such notice, such refund shall be forfeited and shall revert to the School District to be utilized for capital facilities or improvements that will benefit the residence(s) for which the payment was made.

d. The School District may request the Town to extend the ten-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.

7. Exemptions.

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

i. Previously-approved and recorded Land Development Projects, other than those phases for which final plats have not been approved.

ii. Alteration or expansion of a Dwelling Unit.

iii. Replacement of a Dwelling Unit.

iv. Construction of an accessory building, or structure.

v. Long-term care facilities or group homes as defined in the Town's ordinances,



vi. Land Development Projects (or portions thereof) that are subject to recorded covenants permanently restricting the age of all residents of all dwelling units such that the dwelling units may be classified as "housing for older persons" pursuant to the Federal Fair Housing Amendments Act of 1988.

vii. Commercial developments.

b. Any claim of exemption as provided in this Section 7 must be made no later than the time of submission of the Project for approval. Any claim not so made may be deemed by the School District and the Town to have been waived by the Developer.

8. 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 6.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.

9. Term.

The term of this Agreement shall commence on the effective date hereof and continue for a period of ten years thereafter unless the Town repeals the implementing ordinance adopted by the Town concurrent with this Agreement. This Agreement shall automatically renew for an additional ten years unless one party notifies the other of intent to non-renew at least 30 days prior to expiration. Should the Agreement expire, the provisions of Section 6.c. pertaining to refunds shall remain in effect until fully implemented.

10. 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 Windsor  
301 Walnut Street  
Windsor, Colorado 80550  
Attention: Town Administrator

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

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 unconstitutional 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. 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.



b. 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. 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 <sup>Canon</sup> Weld 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 WINDSOR, COLORADO**

ATTEST:  
  
Cochran  
Town Clerk

By W. Wayne Miller (Mayor)  
Manager  
Date 11/8/99

APPROVED AS TO LEGAL FORM:  
[Signature]  
Town Attorney

APPROVED AS TO CONTENT:  
[Signature]  
Town Administrator

**POUDRE SCHOOL DISTRICT R-1**

ATTEST:  
[Signature]  
Secretary

By [Signature]  
President, Board of Education  
Date 11/22/99

APPROVED AS TO LEGAL FORM:  
[Signature]  
School District Attorney

**Exhibit A**

**METHODOLOGY FOR CALCULATING LAND DEDICATION REQUIREMENTS AND IN-LIEU PAYMENTS**

Based on the Poudre School District Planning Standards contained in Exhibit B, calculation of land dedication or in-lieu fees use the following procedures:

**Elementary School Procedure:**

The elementary school student yield per dwelling unit is 0.2456. The amount of land required per student (based on an 11-acre school site) is 0.019 acre. The acreage required per dwelling is 0.2457 times 0.019 or 0.004668 acre. To convert the land dedication requirement into in-lieu fees, the acreage is multiplied by the average developed land value of \$20,000 per acre or \$93.37 (for multi-family units, use 0.120 student yield per dwelling unit times 0.019 times \$20,000 or \$45.60). (B)

**Junior High School Procedure:**

The junior high school student yield per dwelling unit is 0.1082. The amount of land required per student (based on a 50-acre school site) is 0.056 acre. The acreage required per dwelling is 0.1082 times 0.056 or 0.0060592 acre. To convert the land dedication requirement into in-lieu fees, the acreage is multiplied by the average developed land value of \$20,000 per acre or \$121.18 (for multi-family units, use 0.055 student yield per dwelling unit times 0.056 times \$20,000 or \$61.60). (B)

**High School Procedure:**

The high school student yield per dwelling unit is 0.0978. The amount of land required per student (based on a 100-acre school site) is 0.056 acre. The acreage required per dwelling is 0.0978 times 0.056 or 0.005477 acre. To convert the land dedication requirement into in-lieu fees, the acreage is multiplied by the average developed land value of \$20,000 per acre or \$109.54 (for multi-family units, use 0.050 student yield per dwelling unit times 0.056 times \$20,000 or \$56). (B)

**Total:**

**The total land dedication or in-lieu fees required per single-family dwelling unit is:**

	Land	In-Lieu Fees
Elementary School	0.004668 acre	\$ 93.37
Junior High School	0.0060592 acre or	\$ 121.18
High School	0.005477 acre or	\$ 109.54
Totals	0.0162	\$ 324.09

**The total land dedication or in-lieu fees required per multi-family dwelling unit is:**

	Land	In-Lieu Fees
Elementary School	0.00228 acre or	\$ 45.60
Junior High School	0.00308 acre or	\$ 61.60
High School	0.0028 acre or	\$ 56.00
Totals	0.00816	\$ 163.20



**Exhibit B**

**Poudre School District Planning Standards**

**Student Yields**

Elementary	0.2549
Middle School	0.1066
High School	0.0934
Total	0.4549

**Capacity**

Elementary	565
Middle School	900
High School	1800

**Site Requirement**

Elementary	11 acres
Middle School	50 acres
High School	100 acres

**Developed Land**

Value*	\$20,000
	*40,000

\*Per Town of Windsor Request