

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

THIS AGREEMENT is entered into by and between the Weld County School District RE-2 ("School District"), a political subdivision of the State of Colorado, and the City of Greeley, Colorado ("City"), a municipal corporation of the State of Colorado, to be effective as of the _____ day of _____, 2020 ("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. Pursuant to section 31-23-206, C.R.S., the City has adopted through the City of Greeley Comprehensive Plan various goals, policies, and supporting data in order to plan for the orderly growth of the City.

D. Pursuant to sections 31-23-301 and -303, C.R.S., the City is furthermore authorized to regulate and restrict the density of population of the City for the purpose of promoting health, safety, morals, and general welfare of the community; and to adopt regulations in accordance with the comprehensive plan to facilitate the adequate provision of schools.

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

F. 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 City will have on the adequacy of school sites for the School District and the future residents thereof.

G. The City is authorized by state and local law to adopt appropriate ordinances and regulations for the purpose of promoting and preserving the public health, safety, and welfare of the citizens of the City.

H. 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 City and the School District.

I. 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 City and School District.

J. School land dedication or in-lieu payments serve to implement the City's Comprehensive Plan, by making provisions for public improvements in a manner appropriate for a modern, efficiently functioning City; 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. Such dedication or in-lieu payments specifically promote Council's Goal EH-4: "Support and collaborate with the city's school districts" and Objective EH-4.1: "[W]ork with the school districts and developers of residential projects to set aside sites for schools needed to serve their developments."

K. In cases where annexation is proposed, resulting in future zoning and subdivision, the City has an affirmative requirement, per section 31-12-108.5(1), C.R.S., to prepare a report prior to annexation addressing the effect of the proposed annexation upon the School District "including the estimated number of students generated and the capital construction required to educate such students." Upon completion of a statutorily required public hearing, the City must determine whether the state statutory requirements for annexation are met, and whether additional terms and conditions should be imposed.

L. The City, upon consideration of the effect of residential land developments and the ability of the School District to provide school facilities in the City, has determined that it is in the best interests of the citizens of the City 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.

M. The City 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 City and School District agree as follows:

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

"Developer" means the person or entity seeking land-use approval from the City 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 annexation, subdivision approval or any subsequent amendment to a previously approved development proposal that will result in new or additional Dwelling Units or a population density or population greater than that contemplated by the previously approved development proposal.

" 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, as amended from time to time as provided herein.

" 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, as amended from time to time as provided herein, that include student yields per dwelling unit for 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 City and the School District.

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

a. The City 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. The City and School District furthermore agree that the current School Planning Standards in Exhibit A will be administratively reviewed annually by both the School District and the City no later than April 1 of each calendar year and adjusted by mutual agreement as needed so that the then-current Standards will apply to any proposed Land Development Project thereafter.

b. Prior to or at the time that any proposed plans are submitted to the City 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 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 an application for any proposed Land Development Project to the City, the City will 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 will promptly review the proposal and submit its comments and recommendations to the City.

d. The School District will 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 by the City to the School District for its review.

e. Upon receipt of the School District's determination as to whether land should be dedicated, the City will, to the extent permitted by law, implement said determination as provided in subsection (f) below.

f. The City 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 Section 4 below, has been paid to and received by the School District. The Superintendent of the School District, or the Superintendent's designee, will provide such proof in a timely manner to the Community Development Department of the City. This requirement will 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 will notify the City in writing. Upon receipt of such notification, the City will 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 will so notify the City in writing. Upon receipt of such notification, the City will 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. Dedication of the reserved site shall occur no later than the date of final approval of the Land Development Project that includes the reserved site. The School District will promptly certify to the City 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 will so notify the person(s) shown by the records of the Weld County Assessor as being the then-current owner(s) of such site. Said notice will 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, as a condition of the City's final approval of the Land Development Project.

c. Prior to the issuance of the first residential building permit for the Land Development Project, the dedicated site shall have raw water dedicated, overlot grading, direct access to a publicly dedicated street improved to City standards, and utilities stubbed to the site.

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 will provide a title insurance commitment and policy in an amount equal to the fair market value of the dedicated property, as a condition of the City's final approval of the Land Development Project.

e. The City and the School District agree that the substance of the preceding Subsections 3(a) through 3(d) will be required to be set forth in any preliminary, final, or annexation plats before any such plat will be approved by the City.

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 will 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 City 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 will 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 School District boundaries senior high school feeder attendance area boundaries that include the Land Development Project for which the payment is being made, unless mutually agreed in writing by the Developer, School District, and City. All dedication requirements and in-lieu payments will 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 and Section 2(a), which are in effect at the time the Developer applies for land-use approval.

b. The Methodology adopted pursuant to the provisions of this Agreement will be updated annually from the date of its submission to the City, or less often, as determined by the School District. The updated version of Exhibit B, reflecting such changes, will be furnished to the City within thirty (30) days after their adoption by the School District.

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 will be the owner of the funds in the account.

b. The funds deposited into the account will 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. The time for, nature, method, and extent of such planning or development will be within the sole discretion of the School District.

7. Exemptions.

a. The following will be exempted from land dedication or in-lieu payment requirements:

- 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 City's municipal code.
- v. Commercial and industrial developments.

b. Any claim of exemption as provided in this Section 7 shall 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 City to have been waived by the Developer.

8. Annual Report, Accounting, and Audit.

a. The School District will 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 City will cause an audit to be performed annually of the in-lieu payments collected and expended in accordance with this Agreement. The audit will 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 will be furnished to the City. The cost of the audit will be paid from the School District's general fund.

c. At any time deemed necessary, the City 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 will commence on the Effective Date hereof and continue for a period of ten (10) years thereafter unless the City repeals the implementing ordinance adopted by the City concurrent with this Agreement. This Agreement will automatically renew for additional ten (10) year periods unless one party notifies the other of intent to non-renew at least 30 days prior to expiration of the then current term.

10. Miscellaneous.

a. Faith and Credit. Neither party will 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, 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 will be effective immediately upon such delivery or service. If given by mail, it will be by certified mail, return receipt requested, and addressed to the following addresses:

City of Greeley
1000 10th Street
Greeley, CO 80631
Attention: City Manager

Weld County School District RE-2
Attention: Superintendent of Schools
211 1st Street
Eaton, Colorado 80615

Notice given by mail will be effective three 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 will 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, the Parties will deem that portion to be a separate, distinct, and independent provision, and such holding will not affect the validity of the remaining portions of the Agreement.

f. Indemnification. The City 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 will be responsible for defending such claim (whether filed against the City, the School District, or both) and for the payment of any final monetary judgment entered against the City in any such action. Nothing contained in this Agreement constitutes any waiver for the City or the School District of the provisions of the Colorado Governmental Immunity Act or other applicable immunity defense. This provision will 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 will 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 is not a pledge of the credit of the City or the School District, or a collection or payment guarantee by the City to the School District. Nothing in this Agreement may 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 gives or allows any claim, benefit, or right of action by any third person not a party hereto. Any person other than the City or the School District receiving services or benefits under this Agreement is only an incidental beneficiary.

j. Recording of Agreement. This Agreement will be recorded by the School District with the Weld County Clerk and Recorder.

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

[Signature Page Is Next Page.]

CITY OF GREELEY, COLORADO

By: _____
Mayor

Date: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
City Attorney

APPROVED AS TO CONTENT:

By: _____
City Manager

WELD COUNTY SCHOOL DISTRICT RE-2

By: _____
President, Board of Education

Date: _____

ATTEST:

By: _____
Secretary, Board of Education

APPROVED AS TO LEGAL FORM:

By: _____
School District Attorney

EXHIBIT A

SCHOOL PLANNING STANDARDS

I. Student Yields (per dwelling unit)

	Single Family Detached	Single Family Attached	Multifamily Development	Manufactured Home
Elementary School	0.26	0.14	0.07	0.27
Middle School	0.12	0.06	0.03	0.13
High School	0.14	0.07	0.04	0.14

II. School Facility Enrollment Capacities

Elementary School	600
Middle School	675
High School	900

III. School Site Acreage Requirements

Elementary School	10
Middle School	25
High School	50

IV. Developed Land Value

The district uses a fixed \$136,076 value per acre.

EXHIBIT B

METHODOLOGY

Based on the School District Planning Standards contained in Exhibit A and the presumption of developed land value of \$136,076/acre, calculation of land dedication or in-lieu payments uses the following procedures:

Single Family Detached Housing

Elementary School Procedure

(10 acres ÷ 600 students = 0.017 acres/student)

1. $0.26 \times 0.017 = 0.0044 \times \$136,076 = \$590$

Middle School Procedure

(25 acres ÷ 675 students = 0.037 acres/student)

1. $0.12 \times 0.037 = 0.0044 \times \$136,076 = \$605$

High School Procedure

(50 acres ÷ 900 students = 0.056 acres/student)

1. $0.14 \times 0.056 = 0.0078 \times \$136,076 = \$1,058$

Summary

The total land dedication or in-lieu payment per dwelling unit is:

	Land	In-Lieu Payment
Elementary School	0.0044 acres	\$590
Middle School	0.0044 acres	\$605
High School	0.0078 acres	\$1,058
TOTAL	0.0166 acres	\$2,253

Single Family Attached Housing

Elementary School Procedure

(10 acres ÷ 600 students = 0.017 acres/student)

2. $0.14 \times 0.017 = 0.0023 \times \$136,076 = \$318$

Middle School Procedure

(25 acres ÷ 675 students = 0.037 acres/student)

2. $0.060 \times 0.037 = 0.0022 \times \$136,076 = \$302$

High School Procedure

(50 acres ÷ 900 students = 0.056 acres/student)

2. $0.070 \times 0.056 = 0.0039 \times \$136,076 = \$529$

Summary

The total land dedication or in-lieu payment per dwelling unit is:

	Land	In-Lieu Payment
Elementary School	0.0023 acres	\$318
Middle School	0.0022 acres	\$302
High School	0.0039 acres	\$529
TOTAL	0.0084 acres	\$1,149

Multifamily Development

Elementary School Procedure

(10 acres ÷ 600 students = 0.017 acres/student)

3. $0.070 \times 0.017 = 0.0012 \times \$136,076 = \$159$

Middle School Procedure

(25 acres ÷ 675 students = 0.037 acres/student)

3. $0.030 \times 0.037 = 0.0011 \times \$136,076 = \$151$

High School Procedure

(50 acres ÷ 900 students = 0.056 acres/student)

3. $0.040 \times 0.056 = 0.0022 \times \$136,076 = \$302$

Summary

The total land dedication or in-lieu payment per dwelling unit is:

	Land	In-Lieu Payment
Elementary School	0.0012 acres	\$159
Middle School	0.0011 acres	\$151
High School	0.0022 acres	\$302
TOTAL	0.0045 acres	\$612

Manufactured Home Dwelling

Elementary School Procedure

(10 acres ÷ 600 students = 0.017 acres/student)

4. $0.270 \times 0.017 = 0.0045 \times \$136,076 = \$612$

Middle School Procedure

(25 acres ÷ 675 students = 0.037 acres/student)

4. $0.130 \times 0.037 = 0.0048 \times \$136,076 = \$655$

High School Procedure

(50 acres ÷ 900 students = 0.056 acres/student)

4. $0.140 \times 0.056 = 0.0078 \times \$136,076 = \$1,058$

Summary

The total land dedication or in-lieu payment per dwelling unit is:

	Land	In-Lieu Payment
Elementary School	0.0045 acres	\$612
Middle School	0.0048 acres	\$655
High School	0.0078 acres	\$1,059
TOTAL	0.0171 acres	\$2,326