

WELD COUNTY SCHOOL DISTRICT No. Re - 5J

3 NORTH JAY AVENUE JOHNSTOWN, CO 80534



DR. JACK PENDAR
SUPERINTENDENT
Phone (970) 587-2336
Fax (970) 587-2607

November 17, 1999

Roy Lauricello, Town Manager
Town of Johnstown
PO Box 609
Johnstown, CO 80534

Dear Roy:

This is a follow up of the three summit meetings that were held this past year. At all meetings, the impact of growth on the weld County School District Re-5J was discussed at length.

Using the data collected it appears that the cash in lieu fee should be raised from the current amount of \$446 to a revised figure of \$750 This fee is calculated on the following data:

School type	Yield	Acres per Student Capacity	Acres Required per Housing Unit	Per Acre Value	CIL Amount Per Unit
Elementary	.345	.0250	.0086	\$25,000	\$216
Middle	.170	.0500	.0085	\$25,000	\$213
Sr. High	.195	.0667	.0130	\$25,000	\$325
TOTAL	.710				\$753*

The IGA between the Town and the School District states the cash in lieu fee should be reviewed on an annual basis. At this time, the School District is requesting the Town of Johnstown to increase the cash in lieu of land dedication fee to \$753.

If this increase were to take effect January 1, 1999, it would benefit the district greatly. Thank you for your support in this matter.

Sincerely,


Jack E. Pendar
Superintendent

*total may not add due to rounding

Copy

**INTERGOVERNMENTAL AGREEMENT CONCERNING
ANNEXATIONS AND SCHOOL SITE DEDICATION OR PAYMENTS
IN LIEU FOR SCHOOL SITE PURPOSES**

THIS AGREEMENT is entered into by and between the Weld County Reorganized School District RE-5J ("School District"), a political subdivision of the State of Colorado, and the Town of Johnstown, Colorado ("Town"), a municipal corporation of the State of Colorado, to be effective as of the 1st day of January, 1999 ("Effective Date").

RECITALS

A. Pursuant to Colorado Revised Statute section 31-23-206, as amended, the Town Board and the Planning Commission have adopted goals, policies, and supporting data of the Johnstown Comprehensive Plan in order to plan for the orderly growth of the Town.

B. The growth in residential land development in the Town necessitates the acquisition of sites and the building of additional school facilities and/or improvements to existing school facilities in order to accommodate the corresponding increases in the student population.

C. The Town and the School District wish to enter into an Intergovernmental Agreement Concerning Joint Planning.

D. Pursuant to Colorado Revised Statute sections 31-23-301, and -303, the Town is authorized to regulate and restrict the density of population of the Town 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. Colorado Revised Statute section 31-12-108.5(1) requires that prior to any proposed annexation the Town must prepare a report 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."

F. Upon completion of a statutorily required public hearing, the Town must determine whether the state statutory requirements for annexation are met, and whether additional terms and conditions should be imposed.

G. The Town may deny approval of the annexation or future subdivision if adequate educational opportunities cannot be afforded to the estimated new students.

H. Alternatively, the annexation may be approved if the developer agrees to enter into a public improvements agreement to mitigate the costs of school sites that will be necessary to provide adequate educational opportunities to the estimated number of new students.

I. In order to provide adequate school facilities to serve new residential developments within future annexations, it is imperative that the School District be included in the negotiation process between the Town and developers seeking annexation or the subdivision of land.

J. The Colorado Supreme Court has held that the Public School Finance Act of 1994 does not prevent public school districts from entering into such agreements.

L. The Board of Trustees of the Town, upon consideration of the effect of residential land developments and the ability of the School District to provide school sites and facilities in the Town, has determined that it is in the best interests of the Town to enter into an Intergovernmental Agreement with the School District for the purpose of implementing such agreements with developers and forwarding any resulting school sites payments to the School District, as provided by this Agreement.

M. The Town and School District desire to define the rights and obligations with respect to the planning, collection, and use of such school sites and/or payments.

AGREEMENT

NOW, THEREFORE, in consideration of the objectives and policies expressed in the recitals and the mutual promises contained in this Agreement, the Town and School District agree as follows:

1. *School Planning Standards*

a. The School District has adopted planning standards related to: (i) student yields for each school age level; (ii) school facility enrollment capacities; (iii) school site acreage requirements; and (iv) developed land value for the purposes of providing notice to developers as to the amount of possible payments (collectively referred to as "School District Planning Standards" or "Standards" and "School District Methodology"), attached as Exhibits A and B and incorporated into this Agreement.

b. The Town and School District agree that the current School Planning Standards in Exhibit A are reasonable and that the Standards should be reviewed annually by both the District and the Town and adjusted by mutual agreement as needed.

c. In the event of revisions to any proposed annexation or subdivision, the Town, shall apply the most current adopted School Planning Standards to such areas. If such adjustments result in additional school sites or facilities necessary to provide adequate educational opportunities, any payments agreed upon shall be modified and conveyed or paid as provided herein. The value of the payment paid in connection with the original submission shall be credited against the revised requirements.

2. *Determination of School Site/Facility Requirements*

a. Upon formal submission to the Town of a proposed annexation or subdivision, the Town shall refer 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 a proposed annexation or subdivision. The School District shall promptly review the proposal and shall submit its comments and recommendations to the Town.

b. The Superintendent of the School District or a designee will meet with the Town Administrator or designee for the purpose of determining whether a proposed annexation or subdivision will adversely affect the School District's ability to provide adequate educational opportunities to the students generated by the annexation or subdivision consistent with the School Planning Standards.

c. The School District shall make a determination concerning the impact of the annexation or subdivision upon the adequacy of school sites and facilities based upon the School District Planning Standards.

d. Upon receipt of the School District's comments and recommendations, the Town shall review the developer's proposal and the School District's comments and recommendations.

e. If the School District determines that the proposed annexation or subdivision will have an adverse effect on the School District's ability to provide adequate educational opportunities to the students generated by the proposed development as well as existing resident students, the Town may withhold approval absent a dedication of land or a payment consistent with the standards set forth in Appendix B or the written agreement of the developer to comply with the provisions of this Agreement and related ordinance at the same time of subdivision.

f. The School District agrees that the Town may grant approval of a proposed annexation or subdivision if the developer enters into an agreement to mitigate the cost of providing adequate sites for educational facilities consistent with the formula in Appendix B and in accordance with Section 4 below.

g. In the event that, based upon the application of the Standards and Methodology, a dedication of land would result in a parcel that in itself would be of insufficient size or unsuitable location for a school site, the School District agrees to discuss with the Town:

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

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

3. *Conveyance of Dedicated Land*

If land is being dedicated as part of any proposed annexation or subdivision, the Town may condition approval on satisfaction of the following requirements:

a. Developer has conveyed or agreed to convey to the School District by general warranty deed, title to the land slated for dedication, which title is to be 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 to the date of conveyance or dedication. Developer shall waive any right or option to repurchase the land including, but not limited to, any right of first refusal.

b. At the time of dedication or conveyance, the developer shall provide at developer's expense, a title insurance commitment and policy in an amount equal to the fair market value of the dedicated property. Unless already provided by security (bond, irrevocable letter of credit, etc.) to the Town for development costs, not later than issuance of the first certificate of occupancy in the subdivision, developer shall also pay one-half of street development costs, and shall either provide or pay the costs associated with providing improvements of water, sewer, natural gas, telecommunications, and other utilities stubbed to the site, and overlot grading of the dedicated land; all of which costs have been considered and included in the determination of the Dedicated Land Value as set forth in Exhibit A for those developers who make in-lieu payments.

4. *Assessment and Amount of In-Lieu Payments*

If no land dedication is made to the School District with respect to a particular proposed annexation or subdivision, the amount of an in-lieu payment shall be determined and paid for each residential dwelling unit (prior to the issuance of a building permit) within that project, according to the schedule set forth in Exhibit B.

5. *Methodology for Assessing In-Lieu Payments*

a. The School District has provided a methodology to determine the land dedication requirements or in-lieu payments for residential dwelling units sufficient to provide adequate educational opportunities to new residential developments. The parties agree that the methodology (referred to as "School District Methodology" or "Methodology"), attached and incorporated into this Agreement as Exhibit B, 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 land dedication or in-lieu payments will be used for site acquisition (including planning and other related costs), within the senior high school feeder attendance area boundaries that include the annexation or subdivision for which the payment is being made. Unless and until modified by the parties, such methodology shall include, but shall not be limited to, the following factors:

i. School Planning Standards which establish the student yields and technical and educational specifications for school facilities (elementary, middle, and high school levels), consistent with the policy of the Board of Education of the School District;

ii. The capacity demand for each category of school facility resulting from residential dwelling units;

iii. The means for determining the land value for the subject property;
and

iv. The procedure for calculating the value of the land dedication, the in-lieu payments sufficient to provide educational opportunities, or the combination of land dedication and in-lieu payments, required per residential dwelling unit.

b. The Exhibits adopted pursuant to the provisions of this Agreement shall be updated annually. A copy of the updated Exhibits 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 reflected in the School Planning Standards (Exhibit A) and the School District Methodology (Exhibit B). Revising such in-lieu payments shall be at the sole discretion of the Town Board.

6. Exemptions

a. Because the following are not considered to have an adverse effect on the School District's ability to provide adequate educational opportunities, they shall be exempted from land dedication requirements or in-lieu payment requirements:

i. Alteration or expansion of a residential dwelling unit not exceeding a new increase of 1,000 square feet of the existing dwelling unit.

ii. Replacement of a residential dwelling unit in which the replacement does not exceed a net increase of 1,000 square feet of the dwelling unit being replaced.

iii. Construction of a non-dwelling unit, accessory building, or structure.

iv. Construction of an accessory residential dwelling unit according to Johnstown Municipal Code.

v. Nursing homes as defined in the Municipal Code.

vi. Town-approved planned residential developments that are subject to recorded covenants restricting the age of the residents of said 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.

b. Any claim of exemption as provided in this Section 6 must be made no later than the time of application for a building permit. Any claim not so made shall be deemed waived.

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

a. All in-lieu payments collected at the time a building permit is issued for a residential property within an annexation or subdivision, as defined in this Agreement, shall be properly identified and forwarded to the School District to be promptly deposited into a separate account to be established and held by the School District. Funds withdrawn from this fund must be used solely for the purposes specified in this Agreement.

b. The School District shall deposit funds collected from in-lieu payments into an interest-bearing account authorized by Colorado Revised Statutes sections 24-75-601 to -605. The School District shall be the owner of the funds in the account.

c. The funds deposited into the account shall be earmarked and expended solely to acquire, develop, or expand school educational sites, within the senior high school feeder attendance area boundaries that include the subdivision 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.

8. *Annual Report, Accounting, and Audit*

a. The School District shall submit an annual report to the Town, on or before January 31, describing the School District's receipt of land dedication, receipt of in-lieu payments and expenditure of in-lieu payments during the preceding fiscal year. This report shall include:

i. A review of the assumptions and data upon which the methodology is based, including student generation ratios, and attendance area boundaries;

ii. Statutory changes or changes in the School Planning Standards or in Town policies related to construction of school facilities; and

iii. Any recommended modifications to the land dedication and in-lieu payment schedule.

b. After receipt of the report, the Town shall review it, considering those matters listed in the previous subsection and complete its review on or before February 28 of that year.

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

d. 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. 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.

9. *Term*

The term of this Agreement shall commence on the Effective Date and continue for a period of one year thereafter unless the Town repeals the implementing ordinance adopted by the Town concurrent with this Agreement, following at least 90 days prior notice to the School District. This Agreement shall automatically renew for an additional one-year period unless one party notifies the other of intent to non-renew at least 90 days prior to expiration.

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 in 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 Johnstown
P.O. Box 609
Johnstown, CO 80534

Weld County Reorganized School District RE-5J
3 N Jay Avenue
Johnstown, CO 80534

Notice given by mail shall 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 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 School District agrees to defend any legal action that may be brought against the Town and challenging the collection of payments under or the enforcement of the Intergovernmental Agreement Concerning Annexations and School Site Dedication or Payments in Lieu for School Purposes, and, to the extent permitted by law, to indemnify and hold the Town harmless from any final monetary judgment entered in any such action. The obligations of the School District hereunder shall be conditioned upon (a) prompt notification to the School District of any threatened claim; (b) full cooperation by the Town with the School District and its legal counsel in its defense of the claim; and (c) the Town not compromising, settling, negotiating, or otherwise similarly dealing with the claim without the express consent of the School District. By agreeing to this provision, neither party waives or intends to waive the limitations on liability which are provided to them and their employees, officers, agents, and representatives under the Colorado Governmental Immunity Act, sections 24-10-101 *et. seq.*, as amended. Nothing contained herein shall constitute any waiver by the Town or School District of the provisions of the Colorado Governmental Immunity Act or any other applicable immunity defense.

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. Nothing in this Agreement shall be construed to create a multiple-fiscal year direct or indirect municipal or district debt or obligation.

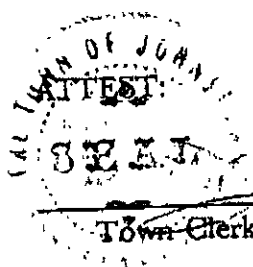
i. *Ordinance.* This Agreement has been approved by the Town as part of and in conjunction with an ordinance establishing the requisite standards and requirements of the Town for future annexation and subdivision of land.

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.

THE TOWN OF JOHNSTOWN, COLORADO
A Municipal Corporation

By: Kyle W. Cox
Mayor

Date: 3/15/99



[Signature]
Town Clerk

Date: 3/15/99

Approved as to form:
[Signature]
Town Attorney

Date: 3/15/99

WELD COUNTY REORGANIZED SCHOOL DISTRICT RE-5J

By: [Signature]
Board of Education President

Date: 3/15/99

ATTEST:

Secretary

Date: _____

Approved as to form:

School District Attorney

Date: _____

EXHIBIT A

Weld County Reorganized School District RE-5J
Johnstown, Colorado

*School District Planning Standards***I. *Student Yields***

Elementary School	<u>345</u>	per dwelling unit
Middle School	<u>170</u>	per dwelling unit
High School	<u>195</u>	per dwelling unit

II. *School Facility Enrollment Capacities*

Elementary School	<u>400</u>	students
Middle School	<u>400</u>	students
High School	<u>500</u>	students

III. *School Site Acreage Requirements*

Elementary School	<u>10</u>	acres
Middle School	<u>20</u>	acres
High School	<u>40</u>	acres

IV. *Developed Land Value*

\$13,600 per acre

EXHIBIT B**Weld County Reorganized School District RE-5J
Johnstown, Colorado***School District Methodology*

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

See Attached Table

<u>School Type</u>	<u>Yield</u>	<u>Acres Per Student Capacity</u>	<u>Acres Required per Housing Unit</u>	<u>Per Acre Value</u>	<u>C-I-L Amount Per Unit</u>
Elementary	0.345	.025	0.0086	\$13,600	\$117
Middle	0.170	.050	0.0085	\$13,600	\$116
Sr. High	0.195	.080	0.0156	\$13,600	\$213
Total	0.710				\$446