

**RESOLUTION 2018-114  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
APPROVING AN AMENDED AND RESTATED INTERGOVERNMENTAL  
AGREEMENT BETWEEN THE CITY AND THE POUDBRE SCHOOL DISTRICT  
PERTAINING TO THE LAND DEDICATION AND IN-LIEU FEE REQUIREMENTS  
IN ARTICLE III OF CHAPTER 7.5 OF THE CODE OF THE CITY OF FORT COLLINS**

WHEREAS, effective April 21, 1998, the City entered into an intergovernmental agreement with the Poudre School District (“PSD”), which agreement provides for the dedication of land by developers of residential properties in the City to PSD for the construction of new schools needed to offset the impacts of such development or, in the alternative, for the payment of a fee in-lieu of such dedication, and which has been amended by the City and PSD as authorized in City Council Resolution 1998-073, Resolution 1999-044, Ordinance No. 079, 2001, Ordinance No. 150, 2006, Ordinance No. 059, 2011 and Ordinance No. 080, 2013 (the “PSD Agreement”); and

WHEREAS, before the City entered into the PSD Agreement, the City Council amended the City Code to establish the City’s authority to impose the land dedication and in-lieu fee requirements on behalf of PSD as provided in the PSD Agreement by adopting Ordinance No. 74, 1998 in May of 1998, in which the City Council added a new Article III to City Code Chapter 7.5, which Article III has been amended by Council several times since then; and

WHEREAS, the term of the PSD Agreement expired on April 21, 2018, but as authorized by the City Council in Resolution 2018-037, the term of the PSD Agreement was extended by the parties by written agreement through December 31, 2018, to give the staffs of the City and PSD additional time to negotiate the terms and conditions of a new intergovernmental agreement; and

WHEREAS, City and PSD staffs have completed their negotiations and City Council has been presented for its consideration the “Amended and Restated Intergovernmental Agreement Concerning Land Dedication or Payment of a Fee in Lieu of Land Dedication for School Purposes” attached as Exhibit “A” and incorporated herein by reference (the “PSD Amended and Restated Agreement”); and

WHEREAS, the City Council has also been presented for its consideration proposed Ordinance No. 171, 2018, which contains the amendments to Article III of Code Chapter 7.5 that are needed to ensure that the provisions of the PSD Amended and Restated Agreement and Article III are consistent and not in conflict; and

WHEREAS, the PSD Amended and Restated Agreement provides that it will be effective January 1, 2019, and that it will supersede and replace in all respects the PSD Agreement; and

WHEREAS, the City and PSD are each authorized to enter into the PSD Amended and Restated Agreement pursuant to Sections 29-20-105 and 22-54-102(3)(a) of the Colorado Revised Statutes; and

WHEREAS, the City Council hereby finds and determines that entering into the PSD Amended and Restated Agreement is in the best interest of the City and necessary for the public's health, safety and welfare and, in entering into it, intends for the PSD Amended and Restated Agreement to supersede and replace in all respects the PSD Agreement.


NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.


Section 2. That the City Council hereby approves PSD Amended and Restated Agreement.

Section 3. Provided that Ordinance No. 171, 2018, is adopted by City Council on second reading and becomes law as provided in the City Charter, the Mayor is authorized to execute the PSD Amended and Restated Agreement in substantially the form attached hereto as Exhibit "A," subject to such minor modifications as the Mayor, in consultation with the City Manager and City Attorney, may determine to be necessary and appropriate to protect the interests of the City or to effectuate the purposes of this Resolution. That when so executed by the Mayor, the PSD Amended and Restated Agreement shall supersede and replace in all respects the PSD Agreement.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 4th day of December, A.D. 2018.

  
\_\_\_\_\_  
Mayor

ATTEST:

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



**AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT CONCERNING LAND DEDICATION OR PAYMENT OF A FEE IN LIEU OF LAND DEDICATION FOR SCHOOL PURPOSES**

THIS AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT (this "IGA") is entered into by and between Poudre School District R-1, a political subdivision of the State of Colorado, ("School District") and the City of Fort Collins, a Colorado home rule municipality, ("City"), with the School District and City being referred to jointly herein as the "Parties" or individually as "Party". This IGA shall be effective as of the 1st day of January, 2019 ("Effective Date") and shall amend, restate, replace, and supersede the Parties' "Intergovernmental Agreement Concerning Land Dedications or Payments in Lieu of Land Dedications for School Purposes," dated April 21, 1998, as extended by mutual agreement of the Parties through December 31, 2018 (the "1998 Agreement").

**RECITALS**

A. Local governments are encouraged and authorized to cooperate or contract with other units of government, pursuant to Section 29-20-105 of the Colorado Revised Statutes ("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. C.R.S. Section 22-54-102(3)(a) recognizes the authority of local governments and school districts to cooperate through intergovernmental agreements to fund, construct, maintain and manage capital construction projects, provided that funding is derived from a source of local government revenue that is otherwise authorized by law.

C. The growth in residential land development in the City and throughout the GMA creates for the School District the need to build additional School Facilities or to expand existing School Facilities in order to accommodate the corresponding increases in the student population, which requires, in connection with such new development within the City and throughout the GMA, the dedication of land for new School Facilities or the payment of an in-lieu fee to be used to buy the needed land or to expand existing School Facilities ("In-lieu Fee") to help to meet such demand.

D. The School District has adopted certain planning standards and a methodology for calculating the School District's need for additional land or expanded School Facilities that will result from any proposed land-use approval by the City.

E. The City is authorized to adopt appropriate ordinances and regulations for the purpose of promoting and preserving the public health, safety and welfare of the City's residents.

F. There is an essential nexus between the need for the dedication of School Sites or the payment of an In-lieu Fee and the legitimate public purposes of promoting and preserving the public health, safety and welfare of the residents living in the boundaries of the City 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 the payment of an In-lieu Fee for school sites in order to achieve rational and cost-effective planning and to assure that the requirements for land dedications or payment of an In-lieu Fee are sufficient to serve student populations in areas that are experiencing new development.

H. School land dedication or payment of an In-lieu Fee serve to implement the City's Comprehensive Plan by making provisions for public improvements in a manner appropriate for a modern, efficiently functioning municipality.

I. The City, upon consideration of the effect of residential land developments and the ability of the School District to provide school facilities both within and outside the City and throughout the GMA, has determined that it is in the best interests of the City and its residents to enter into this IGA for the purpose of providing for the dedication of land for School Sites or the payment of an In-lieu Fee as provided in this Agreement.

J. Based upon their mutual experience over the past twenty years under the 1998 Agreement, the City and School District desire to amend and restate their respective rights and obligations with respect to the planning, collection and use of such land dedications and the payment of an In-lieu Fee and, in doing so, intend that this IGA shall replace and supersede the 1998 Agreement in all respects.

K. In order to implement the provisions of the 1998 Agreement, the Fort Collins City Council (the "City Council") adopted Ordinance No. 74, 1998, in which it added to City Code Chapter 7.5 a Division 1 in Article III and subsequently amended Division 1 in ordinances adopted in 2000, 2002, 2012, 2013 and 2017 and, most recently, City Council adopted Ordinance No. 171, 2018 making amendments to specifically implement this IGA (collectively, the "Implementing Ordinance").

## AGREEMENT

NOW, THEREFORE, in consideration of the objectives, policies and findings expressed in the Recitals of this Agreement, which are hereby adopted by the Parties and incorporated by this reference, and the mutual promises contained in this IGA, the City and School District agree as follows:

1. Definitions. These words and terms, when capitalized in this IGA, shall be given the following meanings:

"Building Permit" means the permit required for the construction of new Dwelling Units under Article II in City Code Chapter 5 and the permit required for the installation of a mobile home pursuant to City Code Section 18-8(b).

"City Code" means the Fort Collins Municipal Code, as amended.

"Developer" means the person or entity seeking land-use approval from the City

for a Land Development Project or the person or entity otherwise responsible for land dedication or payment of an In-lieu Fee under this IGA.

"Dwelling Unit" means one (1) or more rooms and a single kitchen and at least one (1) bathroom, designed, occupied or intended for occupancy as separate quarters for the exclusive use of a single family for living, cooking and sanitary purposes, located in a *single-family, two-family or multi-family dwelling or mixed-use building*, as these italicized terms are defined in the Land Use Code.

"GMA" means the "Growth Management Area," the boundaries of which were established in the Intergovernmental Agreement (Regarding Cooperation on Managing Urban Development) dated June 24, 2008, *nunc pro tunc* October 17, 2006, between the City and Larimer County (the "GMA IGA"), as such boundaries may be changed from time to time by written agreement of the City and Larimer County as provided in Section 11 of the GMA IGA.

"Land Development Project" or "Project" means any proposed land development project for which a development application or development application for permitted use has been filed with the City under the Land Use Code or any subsequent amendment to a previously approved subdivision and which, if approved, could result in the construction of new Dwelling Units.

"Land Use Code" means the City of Fort Collins Land Use Code, as amended.

"Methodology" means the formulas, based upon the School Planning Standards, for calculating land dedication requirements and the In-lieu Fee, as set forth in **Exhibit A** attached hereto and incorporated herein by this reference.

"School Facility" means any building, structure or appurtenant facility, whether combined in a single structure or separate structures, that is required in the judgment of the School District Board of Education for the provision of K-12 educational services within the GMA, including, without limitation, any classroom building, administrative office building, transportation center, athletic field and/or structure, stadium, indoor pool, maintenance building, teacherage and other employee housing and/or training facility.

"School Planning Standards" or "Standards" means the adopted School District land use standards set forth in **Exhibit B** attached hereto and incorporated herein by this reference, which include student yields per dwelling unit for the three separate school levels, School Facility capacities, and the estimated fair market value of real property that is located within the boundaries of both the City and the School District.

"School Site" means a tract or parcel of land dedicated by express language in the final plat of a Project for the construction or expansion of School Facilities.

"School Site Acquisition and Development" means the purchase and/or preparation of a School Site and shall include, without limitation, survey work, grading, installation of utilities, street improvements, raw water acquisition, mobile classrooms and the expansion of existing School Facilities. The term "purchase" for purposes of this definition refers to the dedication and conveyance of a School Site to the School District and any other means by which the School District may obtain the legal right to develop, use and occupy a tract or parcel of land. The term "preparation" as used in this definition, may include expenditures for infrastructure on property adjacent to or related to the development of a School Site itself. By way of illustration and not limitation, such expenditures may include streets and roads, extension of utilities and drainage structures and facilities.

"School Site Acreage Requirements" means the minimum acreage needed for each School Site for each of the three separate school levels. The School Site Acreage Requirements are set forth in **Exhibit B** attached hereto and incorporated herein by reference.

2. Determination of Land Dedication and In-lieu Fee Requirements

a. The City and School District find and agree that the current School Planning Standards in **Exhibit B** and the Methodology in **Exhibit A** are reasonable, and that the implementation of the School Planning Standards and Methodology as written will ensure the following as to each proposed Land Development Project:

- i. That there will be an essential nexus between the dedication or payment contemplated and a legitimate public purpose;
- ii. That the dedication or In-lieu Fee payment will be reasonably proportional, both in nature and extent, to School District's need for additional space to serve an increased student population expected to result from the proposed Land Development Project; and
- iii. That the amount of any In-lieu Fee payment to the School District will be based upon the market value of the land needed as a result of the Land Development Project.

b. Prior to or at the time that an application is submitted to the City for any Land Development Project, the School District shall have the right to obtain from the Developer any and all information the School District deems reasonably necessary for the purpose of determining whether the School District desires the dedication of any land for School Facilities within the Project, consistent with the School Planning Standards.

c. Notwithstanding any provision in this IGA to the contrary, the School District may request a dedication of land that, based upon the application of the Standards and Methodology, results in a parcel that in and of itself would not meet the School Site Acreage Requirements, provided that the School District has a plan for acquisition of the balance of the

property needed to meet the School Site Acreage Requirements. In such event, the 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 School Site. Additionally, nothing herein shall be construed to prevent the School District from purchasing or otherwise acquiring property in excess of the School Site Acreage Requirements in any particular instance.

d. If the School District determines that the dedication of School Sites is not feasible, is not consistent with School 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 the payment of an In-lieu Fee as provided in this IGA.

e. Upon the City receiving an application for any proposed Land Development Project, the City shall submit the Developer's application to the School District for its review, comment and recommendation concerning the adequacy of School Sites and School Facilities within the context of the proposed Land Development Project. The School District shall review the proposed Project within the time allotted on the City's "Project Comment Sheet" or "Referral Notice," and shall submit its comments and recommendations, if any, to the City; provided, however, that the School District shall have a minimum of three weeks for new projects and two weeks for subsequent reviews of an existing project in which to complete its review and provide comments.

f. The School District shall make a determination concerning the space available in its existing School Sites and School Facilities to serve the increased student populations expected to result from the Project based upon the School Planning Standards in effect at the time the Developer's application is submitted to the School District for its review.

g. The City shall review any and all comments, recommendations and determinations made by the School District concerning the Project and, if the School District's recommendations and determinations are substantially in accordance with the Standards, the Methodology and any other applicable provisions of this IGA, the City shall adopt the School District's recommendations and determinations and shall impose such requirements on the Developer that will ensure the implementation of the same as provided in this IGA.

h. 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 on a School Site within the time set forth for the School District to submit its comments to the City, the City agrees to defer action on the Land Development Project's application until a future time to allow the City, School District and Developer to negotiate further, but in no event shall the City be required to defer action on the application beyond an additional ninety (90) days.

i. The City agrees to conduct its process to review applications for Land Development Projects in a manner that encourages each Developer to cooperate with the School District's requests for information and participation in meetings as necessary for the

determinations and undertakings contemplated in this Section 2.

3. Dedication and Conveyance of School Sites

a. If, as a result of the process set forth in Section 2. above, agreement is reached between the School District and Developer for a School Site to be dedicated to the School District as part of the approval of any Land Development Project, the School District shall notify the City in writing. Upon receipt of such notification, the City 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 School Site to the School District.

b. If, as a result of the process set forth in Section 2. above the School District determines that it would be beneficial for a Developer to dedicate land, but no agreement is reached between the School District and Developer for dedication of a School Site as part of the approval of the Land Development Project, the School District shall so notify the City in writing within the time provided in paragraph h. of Section 2. above. Upon receipt of such notification, and provided that the School District's land dedication requirement is substantially in accordance with the Standards, the Methodology and any other applicable provisions of this IGA, the City shall adopt the School District's determination and shall reject the final plat for the Land Development Project, or any portion of it. Thereafter, the final plat for such Land Development Project shall be accepted for recording only if such plat provides for the contemporaneous dedication and conveyance of a School Site acceptable to the School District.

c. Dedication of a School Site shall occur no later than the date of final approval of the Land Development Project and shall be evidenced by dedication language set forth in the final plat for the Project.

d. The following shall occur prior to the issuance of the first Building Permit for the Land Development Project containing a School Site:

i. The School Site shall have overlot grading, direct access to a publicly dedicated street improved to City standards and utilities stubbed to the School Site; and

ii. Title to the School 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 the School District with 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 Fee

If the School District determines that it wishes to receive a payment of the In-lieu Fee, then the amount of the In-lieu Fee payment shall be determined according to the Methodology then in effect and paid to the School District prior to issuance of any Building Permit for the Land



Development Project.

5. Methodology for Assessing In-Lieu Fee

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 Fee revenues received by the School District will be used by it for the purposes of School Site Acquisition and Development or the expansion of School Facilities, and all occurring within the GMA's boundaries except as provided in paragraph 6.b. All dedication requirements and In-lieu Fee 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 paragraph b. below, which are in effect at the time the Developer submits to the City the application for the subject Land Use Development.

b. The School Planning Standards and Methodology adopted pursuant to the provisions of this IGA shall remain in effect unless and until updated by the School District and approved by the City Council. If and when updates are adopted by the School District, a copy of **Exhibits A and B**, reflecting such updates, shall be furnished to the City within thirty (30) days after their adoption by the School District. The City Council shall thereafter either approve or reject the updated School Planning Standards and/or Methodology and revised assessment figures; provided, however, that the City Council shall not unreasonably withhold or delay approval. Notwithstanding the foregoing, the City Council shall not be required to approve any School Planning Standards or Methodology that proposes an increase in the School Site dedication requirements or the In-Lieu Fee amounts that are in excess of 10% of the requirements and amounts that are in the Standards and Methodology being replaced and in no event shall the City Council be required to approve any Standards or Methodology that propose dedication requirements or In-Lieu Fee amounts that the City is not authorized by law to impose. The last approved Standards and Methodology and assessment figures shall be in effect until such revised Standards and Methodology are approved. Assessments associated with the newly approved Methodology shall be effective from the date of approval by the City Council.

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

a. All payments of the In-Lieu Fee collected by the City shall be properly identified and promptly deposited into a separate account held by the City for the benefit of the School District. The City shall remit to the School District, no less than quarterly, all funds it has collected and deposited into the account, less a two percent (2%) administrative fee. The School District shall be the owner of the funds in the account. The School District shall be solely responsible for the funds it receives. Funds collected shall not constitute revenue of the City under the provisions of Article X, Section 20 of the Colorado Constitution.

b. The funds deposited into the account shall be earmarked and expended only for the purposes of School Site Acquisition and Development, expansion of School Facilities and for the planning and development of such acquisitions and expansions. When expenditures from the account are made for the acquisition of a School Site or the expansion of a School Facility, the expenditures may be made for School Sites located anywhere within the GMA. Notwithstanding

the immediately preceding sentence, expenditures under this Agreement may be made for the high school project to be constructed on a site encompassing approximately 100 acres located at the northwest corner of County Road 5 and East Prospect Road, Fort Collins, Colorado (the "Prospect Site") regardless of whether the Prospect Site is located within the GMA, but only until such time as the Prospect Site is annexed by the Town of Timnath, if ever. Subject to the 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.

7. Exemptions

- a. Each of the following shall be exempt from the land-dedication requirements and the In-lieu Fee payment requirements in this IGA:
  - i. Previously-approved and recorded Land Development Projects, other than those phases for which final plats have not been approved;
  - ii. The installation of any mobile home that replaces a previously existing mobile home on an existing mobile home lot under City Code Section 18-8(b);
  - iii. Alteration or expansion of a Dwelling Unit;
  - iv. Replacement of a Dwelling Unit;
  - v. Construction of an accessory building or structure;
  - vi. Long-term care facilities or group homes as defined in the Land Use Code;
  - vii. Land Development Projects (or portions thereof) that are subject to recorded covenants permanently restricting the age of all residents of all dwelling units in the Project to persons 55 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);
  - viii. Land Development Projects (or portions thereof) that are subject to recorded covenants permanently restricting the age of all residents to 18 years of age or older and permanently restricting the affordability for all residents of all dwelling units and which combine the housing with services that help people who face the most complex challenges to live with stability, autonomy and dignity, such that the dwelling units may be classified as "permanent supportive housing"; and
  - ix. Land Development Projects for which the land-dedication requirement or the In-lieu Fee payment requirement of this IGA are prohibited by law.

b. Unless exempt by law from the In-Lieu Fee, any claim of exemption as provided in this Section 8 must be made no later than the time of submission of the application for the Land Development Project. Any claim of exemption not so made shall be deemed by the School District and the City to have been waived by the Developer.

c. In addition, the School District acknowledges and agrees that its right to receive and retain In-lieu Fees under this IGA is subject to and governed by: (i) City Code Section 7.5-48(e) authorizing the City Council to waive In-lieu Fees for certain affordable housing Projects; (ii) City Code Section 7.5-49 allowing for developers to appeal to the City Manager the amount of In-lieu Fees imposed; and (iii) City Code Section 7.5-50(c) requiring the refunding of In-lieu Fees collected if not used by the School District for the purposes authorized under this IGA within ten years of collection; provided, however, that the City Council may extend the ten-year expenditure deadline set forth in City Code Section 7.5-50(c) upon the request of the School District for good cause shown and following a public hearing. "Good cause," for purposes of extending the ten-year deadline, shall include, without limitation, a showing by the School District that it has plans approved by its board for School Site Acquisition and Development within the GMA that will occur within the period of the extension requested and for which the In-lieu Fees are needed.

8. Accounting and Audit.

a. The School District shall establish and maintain an accounting system to ensure that all revenues it receives from the In-lieu Fee are expended in accordance with Section 6.b. of this IGA.

b. At any time it deems necessary, the City may request an accounting from the Superintendent of the School District concerning the expenditure of the In-lieu Fee revenues the School District has received under this IGA and the School District agrees to promptly provide such accounting.

c. The City and the School District also agree to each conduct annual audits of the In-lieu Fees they have each respectively collected and expended as provided in City Code Section 7.5-51(a).

9. Term

The term of this IGA shall commence on the Effective Date and shall continue for a period of five (5) years thereafter. This IGA shall automatically renew for successive and additional five (5) year terms unless one of the Parties notifies the other of intent to non-renew at least thirty (30) days prior to the expiration of any of these five-year terms.

10. Prior Agreements

The 1998 Agreement and any other prior agreements or understandings of the Parties pertaining to the matters addressed in this IGA are hereby canceled and superseded as of the Effective Date and thereafter shall have no further force or effect.

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 IGA may be amended only by agreement of the Parties evidenced by a written instrument authorized and executed with the same formality as accorded this IGA.

c. Notice: Any notice required by this IGA 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:

City Manager  
City of Fort Collins  
P.O. Box 580  
Fort Collins, CO 80522

With a copy to:

City Attorney  
City of Fort Collins  
P.O. Box 580  
Fort Collins, CO 80522

Poudre School District  
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 and Venue: This IGA and the rights and obligations of the Parties under it shall be interpreted and construed in accordance with the laws of the State of Colorado, the City Code, the Land Use Code and the Implementing Ordinance (collectively, the "Controlling Laws"). In the event of any conflict between this IGA and the Controlling Laws, the Controlling Laws shall control the interpretation of the IGA and the Parties' performance of their obligations under it. Neither Party shall be obligated under this IGA to take any action that would be a violation of or in conflict with any of the Controlling Laws. The Parties agree that venue for any judicial action to interpret, enforce or seek damages under this IGA shall be in the District Court of Larimer County, Colorado.

e. Severability: If this IGA, 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 IGA.

f. Indemnification: The City and School District agree to cooperate with one another in the defense of any legal action that may be brought contesting the validity of this IGA or the Implementing Ordinance. To the extent permitted by law, the School District shall 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 IGA shall constitute any waiver by the City or the School District of any defenses, immunities or limitations of liability under the Colorado Governmental Immunity Act or available under any other applicable Colorado or federal law. This paragraph f. shall survive termination of this IGA and be enforceable until all claims are precluded by statutes of limitation.

g. Survival: Any provision or obligation of this IGA, 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 defaulting Party until the expiration of any applicable legal or equitable period of limitation.

h. Financial Obligations: This IGA shall not be deemed a pledge of the credit of the City or the School District, or a guarantee of collection or payment by the City to the School District. Nothing in this IGA shall be construed to create a multiple-fiscal year direct or indirect City or School District debt or financial obligation.

i. No Third-Party Beneficiaries: None of the terms, conditions or covenants in this IGA shall give or allow any claim, benefit or right of action by any third person or entity not a party hereto.

j. No Assignment: The rights, benefits and obligations of this IGA shall not be assigned by either of the Parties without the other Party's prior written consent. Any assignment without such prior written consent shall be deemed null and void and of no effect.

k. Binding Effect: This IGA shall inure to the benefit of and be binding on the Parties' respective successors and permitted assigns.

l. Recording of Agreement: This IGA shall be recorded with the Larimer County Clerk and Recorder at the shared cost of the Parties.

IN WITNESS WHEREOF, the Parties have executed this IGA as of the date indicated below and this IGA shall be in full force and effect on the Effective Date.

**CITY OF FORT COLLINS, COLORADO**

By \_\_\_\_\_  
Wade Troxell, Mayor

ATTEST:

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

\_\_\_\_\_  
Date

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Deputy City Attorney

**POUDRE SCHOOL DISTRICT R-1**

BY \_\_\_\_\_  
President, Board of Education

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
School District Attorney

## Exhibit A

### Poudre School District

#### School District Methodology

Based on the School District Planning Standards contained in **Exhibit B**, calculation of land dedication or In-lieu Fee 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

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

	<b>Category A</b> <i>1 to 4 attached units</i>		<b>Category B</b> <i>5 or more attached units</i>	
	<u>Land</u>	<u>PILO</u> <sup>1</sup>	<u>Land</u>	<u>PILO</u> <sup>1</sup>
<b>Elementary School</b>	0.0100 acres	\$ 950	0.005 acres	\$475
<b>Middle School</b>	0.0040 acres	\$ 380	0.002 acres	\$190
<b>High School</b>	0.0040 acres	\$ 380	0.002 acres	\$190
<b>Total</b>	<b>0.0180 acres</b>	<b>\$1,710</b>	<b>0.009 acres</b>	<b>\$855</b>

To determine the land or In-lieu Fee 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  
\$1,710 x 300 = \$513,000 PILO*)

---

<sup>1</sup> PILO means "payment-in-lieu-of" land dedication

## Exhibit B

### Poudre School District

#### School District Planning Standards and School Site<sup>1</sup> Acreage Requirements

##### Planning Standards

i. Student Yield Per Dwelling Unit<sup>2</sup>

	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 Enrollment Capacities<sup>3</sup>

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

iii. Developed Land Value for 2012<sup>4</sup>

**\$95,000**

##### School Site Acreage Requirements<sup>2</sup>

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

<sup>1</sup> This Exhibit is limited to requirements for instructional buildings in the nature of a typical school building within the School District. Standards for other types of School Facilities will be determined on a case by case basis.

<sup>2</sup> Average student yields for elementary, middle school, and high school based on information collected by Western Demographics, Inc. includes all residential dwelling types within the School District.

<sup>3</sup> Based on Poudre School District's current educational specifications.

<sup>4</sup> Average land value based on report prepared by Shannon and Associates dated March 14, 2006 and updated August 13, 2008, December 29, 2010, and November 16, 2012. Adjustments to occur every 2 years in the even year based on changes to the Larimer County Assessor's "Residential Lot Classification".