

INTERGOVERNMENTAL AGREEMENT FOR THE JOINT USE AND MAINTENANCE OF A PARKING AREA AND SIDEWALK

THIS INTERGOVERNMENTAL AGREEMENT FOR THE JOINT USE AND MAINTENANCE OF PARKING AREA AND SIDEWALK (“Agreement”) is made and entered into this ____ day of _____, 2019, between the TOWN OF ERIE, COLORADO acting by and through its Board of Trustees (the “Town”), a statutory municipality of the State of Colorado, and the BOULDER VALLEY SCHOOL DISTRICT RE-2 acting through its Board of Education (the “District”), a public school district and political subdivision of the State of Colorado.

BACKGROUND

WHEREAS, the District and the Town are authorized by C.R.S. § 29-1-203 to cooperate or contract with one another to provide any function, service, or facility; and

WHEREAS, the District has a certain parking area that the Town may use for the benefit of its citizens; and

WHEREAS, the District and the Town share a sidewalk path that crosses over the common boundary between the District’s Meadowlark PK-8 school site and the Town’s Star Meadows Park; and

WHEREAS, the Parties agree that joint maintenance and use of the parking lot and sidewalk are desirable; and

WHEREAS, the Parties wish to enter into this Agreement for the benefit of their citizens.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein by reference, the mutual covenants set forth herein, and other good and valuable consideration, the Parties agree as follows:

1. **Definitions.**

- a. “District Designee” means the Superintendent or designee.
- b. “Town Designee” means the Town Manager or designee.
- c. “Parking Lot” means the parking area located at the District’s Meadowlark PK-8 School (“School”), located on Lot 2, Flatiron Meadows – Filing No. 2, 1st Amendment, Town of Erie, County of Boulder, State of Colorado as depicted on Exhibit A, attached hereto and incorporated by reference herein.
- d. “Sidewalk” means the meandering walkway between the Town’s Star Meadows Park (“Park”), located on Lot 1, Flatiron Meadows – Filing No. 2, 1st Amendment, Town of Erie, County of Boulder, State of Colorado, and the School as depicted on Exhibit A, attached hereto and incorporated by this reference.

2. Use and Maintenance of Parking Lot.

2.1 Subject to the restrictions set forth herein, the District grants to the Town a non-exclusive license to use the Parking Lot for visitor parking and access to the Park (the "License"). During the term of the License, the District shall have priority use of the Parking Lot during school days and normal school hours as established by the District in its sole discretion, which may include evenings when activities are being held at the School. School District Use also includes activities scheduled by the School for the benefit of students and staff, including any school-sponsored clubs, activities and athletic teams that take place after school hours, on weekends, and on school holidays and vacations.

2.2 The Town shall have use of the Parking Lot outside of normal school hours unless a school activity is otherwise being conducted at the School, as described above. The Town's use of the Parking Lot shall be in accordance with applicable law and District policy. Motor vehicle and bicycle parking shall be permitted in the Parking Lot by community users during the Town's use on a "first come, first served" basis.

2.3 The Town's use of the Parking Lot pursuant to the License shall be subject to the following restrictions:

2.3.1 No overnight parking by Town users shall be allowed.

2.3.2 Vehicles determined by the District to be abandoned shall be towed at the owner's expense.

2.3.3 No camping or recreational vehicles shall be allowed.

2.4 The District shall maintain the Parking Lot, including snow removal, in accordance with applicable law and District policy.

2.5 The Town shall have the right to enter the Parking Lot at any time for the purpose of providing maintenance vehicular access to the Sidewalk at the access point depicted on Exhibit A.

2.6 Subject to the restrictions set forth herein, the Town grants to the District a non-exclusive license to use the hatched area shown on Exhibit A for the District's regular access to and use of the Parking Lot.

3. Use and Maintenance of Sidewalk. The Parties and their invitees may jointly use the Sidewalk at all times. The Town shall maintain the Sidewalk, including snow removal, in accordance with applicable laws, Town ordinances and District policy. The District may, at its discretion and expense, erect a fence along the School side of the Sidewalk and may control or prohibit use of the Sidewalk during those times when it determines, in the District Designee's sole discretion that it is necessary for the health, safety, or welfare of the students or staff of the School (e.g. "secure perimeter" or "lockdown" events). The Town shall not make any improvements,

alterations, or modifications to the Sidewalk without the District's prior written consent, which consent will not be unreasonably withheld.

4. Term. The initial term of this Agreement shall commence upon the effective date set forth above and shall end five (5) years afterwards, unless renewed or sooner terminated as hereinafter provided.

- a. No later than four (4) months prior to the end of the initial term or any subsequent renewal term, the parties shall meet and review the Agreement for the purpose of determining whether the Agreement should be renewed and to consider any modifications that may be necessary to address the experience and practice of the parties.
- b. This Agreement will be automatically renewed at the conclusion of the initial term for an additional five (5) year period unless either party gives notice to the other party at least sixty (60) days prior to the end of the term of its intent not to renew the Agreement. In the event of such notice, the Agreement shall conclude at the end of the term unless the parties agree in writing that the Agreement shall be extended either in its then current form, or upon modified terms.
- c. Notwithstanding the foregoing, either party may terminate this Agreement by giving the other party twelve (12) months' prior written notice.

5. Liability.

- a. Neither party shall be responsible for or liable for injury to persons or damage to property arising out of or related in any way to the occupancy or use of the Parking Lot or Sidewalk by the other party. To the extent permitted by law, each party agrees to indemnify and hold harmless the other, its officers and employees from and against all liability claims, demands and expenses, including court costs and attorney fees, on account of any injury, loss, or damage that arise out of or are in any manner connected with or related to the use or occupancy of the Parking Lot or Sidewalk under this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by the acts, errors, or omissions of the other party, any contractor, subcontractor, or sub-consultant of the other party, or any of its officers, employees, agents, invitees, servants, successors, or assigns. The parties hereto understand and agree that the District, the Town, and their officers and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the defenses or monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time-to-time amended, or otherwise available by other provision of law to either party, their officers, or their employees.
- b. The covenants and promises contained in this Agreement are for the benefit of the District and the Town only, and do not create any obligations or duties to persons not parties hereto.

- c. Each party agrees to immediately notify the other of any defects or potential defects, dangerous conditions or potential dangerous conditions, claims or potential claims from damage or injury that come to its attention in connection with its usage. The party receiving notice of actual or potential dangerous conditions shall take prompt action to remedy the same. Within fifteen (15) days after any litigation is commenced against either party that contains allegations against the other, the parties will meet to explore efficiencies and determine the course of action in providing a defense, including but not limited to the potential for a joint defense.
- d. In the event of a default in the performance of any material term of this Agreement, the non-defaulting party shall have such remedies as may be available at law or equity, including the remedy of specific performance.

6. Miscellaneous.

- a. Nothing in this Agreement shall affect any other agreement between the Town and the School District now in effect; provided, however, that this Agreement shall replace, void, and supersede any and all existing or former joint use or lease agreements for the use of School District Sites, which shall come under the governance of this Agreement.
- b. Neither party shall extend the faith or credit of the other to any third person or entity.
- c. This Agreement may only be modified upon written agreement of the parties.
- d. This Agreement shall be binding upon the parties and their successors in interest.
- e. Any notice required by this Agreement shall be in writing, made by hand-delivery or certified mail, return receipt requested, and addressed to the following:

Superintendent of Schools
Boulder Valley School District RE-2
6500 Arapahoe
Boulder, Colorado 80303

Town Manager
Town of Erie
645 Holbrook Street
Erie, Colorado 80516

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

- f. The rights and obligations of the parties under this Agreement shall be interpreted and construed in accordance with Colorado law, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.
- g. The parties represent that the individuals signing this Agreement on their behalf possess full power and authority from their respective governing boards in compliance with Colorado law.
- h. No waiver of any right under this Agreement shall operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision of this Agreement.
- i. No provision of this Agreement shall be assigned by either party without prior written consent of the non-assigning party.
- j. There are no intended third-party beneficiaries to this Agreement. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the parties that any person receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.
- k. Each party agrees to perform all other acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement.
- l. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.
- m. To the extent this Agreement is construed to create any multiple-fiscal year direct or indirect financial obligation on the part of either party, such obligation is agreed to be subject to annual budgeting and appropriation.

This Agreement shall be effective upon the execution by both parties.

TOWN OF ERIE
A Colorado Municipal Corporation

Mayor

Attest:

Approved as to Form:

Town Clerk

Town Attorney

BOULDER VALLEY SCHOOL DISTRICT RE-2

President, Board of Education

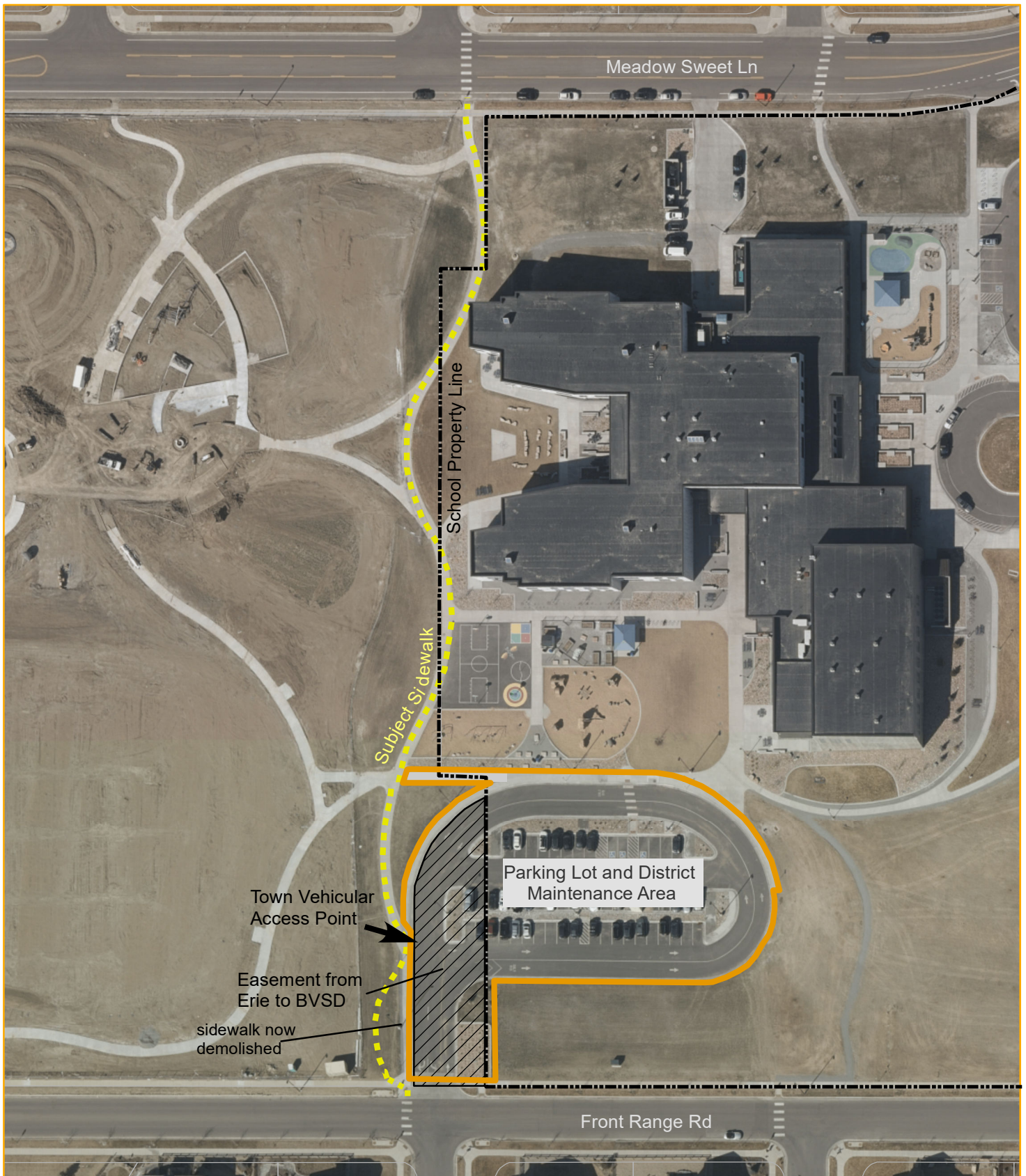
Attest:

Approved as to Form:

By:
Title: Secretary to the Board of
Education

School District Attorney

4848-3173-0309, v. 1



(Map produced by the Planning Dept., June 2018)



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Exhibit A

Meadowlark School and Star Meadow Park Property Line, Sidewalk, and Parking Lot

- Subject Sidewalk (Town Maintained)
- ▭ Parking Area (BVSD Maintained)
- ▨ Easement Area



0 15 30 60 90 120 Feet

This map is for illustrative purposes only, and is not suitable for parcel-specific decision making. The areas depicted here are approximate. More site-specific studies may be required to draw accurate conclusions