AGREEMENT FOR FAIR CONTRIBUTIONS

THIS AGREEMENT is entered into by and between the Town of Erie (the "Town"), a municipal corporation, and the St. Vrain Valley School District RE-1J (the "School District"), a political subdivision of the State of Colorado, to be effective as of the _____day of_____, 2021 ("Effective Date") (together, the "Parties").

RECITALS

A. Local governments are encouraged and authorized to cooperate or contract with other units of government, pursuant to § 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. Growth in residential land development and the construction of new residential dwellings in the Town necessitates the acquisition of additional public school sites to accommodate the corresponding increases in the student population. Requiring land dedication or conveyance for public school sites or payments in lieu of land dedication or conveyance for public school sites (hereinafter collectively referred to as "Fair Contribution for Public School Sites") will provide a portion of the land to meet such demand.

C. To provide adequate public school sites to serve the Town residents of newly constructed residential dwelling units, it is appropriate that the School District and Town cooperate in the area of public school site acquisition by use of Fair Contribution for Public School Sites.

D. Requiring Fair Contribution for Public School Sites implements the goals and policies of the Town to make provision for public improvements in a manner appropriate for a modern, efficiently functioning city and to ensure that new development does not negatively impact the provision of municipal services.

E. When considering an annexation petition, the Town is statutorily authorized by §§ 31-12-108.5 and 110(2), C.R.S., to impose certain terms and conditions relating to the effect of the proposed annexation upon local schools. The Town is further authorized by § 31-23-214, C.R.S., to adopt regulations governing the subdivision of lands within its jurisdiction and which may establish differing requirements applicable to subdivisions of varying sizes, densities or types of dwelling units.

F. It is a reasonable exercise of the power of local self-government to require Fair Contribution for Public School Sites as a method of ensuring that new residential construction and residential development bear a proportionate share of the cost of public school site acquisition necessary to accommodate the educational service capacity demands of the residents who will be living in the new dwelling units.

G. Requiring Fair Contribution for Public School Sites for new residential construction and development is reasonable and necessary to protect, enhance, and preserve the public health, safety, and welfare of the Town's citizens.

H. The Town and School District, upon consideration of the impacts of new residential construction and residential land development on the ability of the School District to provide public school facilities in the Town, agree that it is in the best interests of the citizens of the Town to mutually enter into an intergovernmental agreement for the purpose of providing for Fair Contribution for Public School sites, as provided in this Agreement.

I. The Town and School District do hereby define the rights and obligations of each entity with respect to the planning, collection, and use of Fair Contribution for Public School Sites.

AGREEMENT

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

1. School Site Coordination and Development Referrals

a. In accordance with § 22-32-124, C.R.S., the School District agrees to locate future public school sites in conformity with the adopted plan of the community, insofar as is feasible, to consult with and advise the Town in writing in advance of public school sites acquisition and site development, and to submit a site development plan for review and comment to the Town's planning commission prior to construction of any structure or building.

b. The Town shall refer to the School District all residential land development applications proposed within or affecting the School District attendance area (hereinafter referred to as the "residential land development applications") for review and comment concerning the adequacy of public school sites and facilities. The Town will consider the School District's comments in conjunction with the review and processing of each residential land development application and will implement land dedication for public school sites or payments in lieu of land dedication for public school sites consistent with this Agreement and the municipal code then in effect. If a nonresidential land development application is filed with the Town that may have influence or effect on property owned by or activities of the School District, the Town shall also refer information pertaining to that application to the School District for review and comment. The School District agrees to promptly review the referred development application and promptly submit its comments, recommendations, and requests to the Town.

2. Methodology

a. Contemporaneous with the Effective Date and the effective date of the amendment to the Town subdivision regulations and requirements requiring Fair Contribution for Public School Sites, the Town agrees to enforce such municipal code amendment as a precondition to the lawfully authorized construction of new residential dwelling units not otherwise exempted under Section 5 below.

b. The School District has adopted a methodology dated March 12, 2021 (Methodology), to determine Fair Contribution for Public School Sites for five categories of dwelling units. The Parties agree the Methodology, attached and incorporated herein as **Exhibit A**, has been developed in a manner so as to fairly apportion the cost of acquiring public school sites made necessary by new residential land development applications.

c. As part of the Methodology, the School District has adopted planning standards related to facility enrollment capacities, public school site acreage requirements, and student yields for each of five types of residential dwellings (single family homes, duplexes/triplexes, multi-family units, condos/townhouses, and mobile homes). The Town and School District agree that the Methodology is reasonable and the approved then-current Methodology shall apply to new residential construction within the Town. The Methodology shall be the basis for computing Fair Contribution for Public School Sites for new residential construction. The Town and School District agree that the Methodology adopted by the School District shall be periodically reviewed and revised to reflect the current standards and conditions within the School District.

d. Unless and until modified by the Parties, the Methodology and its supplementary background materials shall include, but shall not be limited to, the following factors:

(1) School planning standards which establish the student yields and technical and educational specifications for facilities for each category of school facility (elementary, middle, and high school levels), consistent with the policy of the Board of Education of the School District;

(2) The capacity demand of each category of school facility resulting from each category of residential dwelling (single family, duplexes/triplexes, multi-family units, condos/townhouses, and mobile homes);

(3) The means for determining the per acre fair market value of land for each type of residential dwelling; and

(4) The procedure for calculating Fair Contribution for Public School Sites required and applicable to each type of residential dwelling.

e. The Methodology shall be updated periodically as conditions warrant by the mutual consent of the Town and the School District. A copy of the updated Methodology shall be furnished to the Town within thirty (30) days after its adoption by the School District. The Town shall hold a public hearing before revising the Methodology.

3. Fair Contribution for Public School Sites Requirement

a. As Fair Contribution for Public School Sites, any person or entity, as part of an applicable residential land development application shall dedicate or convey land for a public school site to the School District, or in the event the dedication of land is not deemed feasible or in the best interests of the School District as determined by the Superintendent or designee, the School District may require a payment in lieu of land dedication or conveyance to the School District. The manner and amount of either type of Fair Contribution for Public School Sites shall be as stated in this Agreement and the incorporated Methodology. This shall not preclude the School District and any person or entity from mutually agreeing to resolve the issue of Fair Contribution for Public School Sites in a manner other than as stated above.

b. If the Fair Contribution for Public School Sites includes the dedication of land, according to paragraph 3.a. above, the Town agrees that before or contemporaneously with the recording of the first final plat related to the applicable residential land development application it will require proof that the dedication has been made to the School District in accordance with the following requirements:

(1) The person or entity has conveyed to the School District by general warranty deed, title to the land slated for dedication, which title shall 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.

(2) At least fifteen (15) days prior to the time of dedication or conveyance of the school site, the person or entity shall provide a title insurance commitment to the School District and, following dedication or conveyance, shall provide and pay for a title insurance policy in an amount equal to the fair market value of the property dedicated or conveyed. At the appropriate time, not later than the issuance of the first building permit for the residential land development application, the person or entity shall also pay or provide for the payment of one-half of street development costs, and shall either provide, or pay or make provision for the payment of the costs associated with making improvements for water, sewer, and utilities

stubbed to the site, and overlot grading of the dedicated land. The person or entity shall also have furnished any off-site easements which the School District needs to develop the site and shall pay, or shall agree to pay in the future, for its proportional cost of improvements deemed necessary by the Town and the School District to provide safe pedestrian and bicycle routes to the school site for those students who will not receive School District transportation to the school site.

(3) The lands being dedicated or conveyed to the School District shall be located and configured as directed by the School District in conformity with the adopted plan of the community, insofar as is feasible, and following review and comment by the Town's planning commission.

(4) The person or entity conveying the land to the School District shall satisfy the Town's water rights dedication and cash in lieu of dedication requirements prior to conveying the property to the School District. Nothing contained herein to the contrary notwithstanding, in no event shall the Town be required to satisfy said water rights dedication and cash in lieu of dedication requirements for the property conveyed. Furthermore, it shall be the School District's responsibility to enforce this provision requiring the person or entity conveying the land to the School District to satisfy the Town's water rights dedication and cash in lieu of dedication requirements prior to conveying the property to the School District. The Town shall not have the responsibility to enforce said requirements; provided, however, the Town agrees that it shall not approve the first final plat for recording as stated in paragraph 3.b. above, until the School District confirms to the Town in writing that the Town's water rights dedication and cash in lieu of dedication requirements have been made to the School District or are otherwise adequately secured.

(5) In addition to conveyed or dedicated lands, the School District shall have the right to purchase adjacent lands within the residential land development application at its fair market value so that the dedicated or conveyed and purchased lands together form a contiguous parcel which meets the School District's land area requirements listed in **Exhibit A.**

c. If the Fair Contribution for Public School Sites includes the dedication of land, according to paragraph 3.a. above, the District shall utilize the lands dedicated or conveyed solely as a site for a school or for other school purposes if approved by the Town. If at such time the District determines that a school is no longer necessary at the particular site and determines to sell the land, the District shall offer a ninety (90) day first right of refusal to the Town to purchase the parcel at the per acre amount established in the then-current and adopted Methodology demonstrated in **Exhibit A.** The District shall allow the Town a multi-fiscal year time-period for payment for the school site, if requested by the Town, not to exceed three (3) years. Any sale to the Town shall include the water dedicated for or attached to the land unless by agreement of both parties the water shall be retained by the District, in which case the value of the land shall be reduced accordingly.

d. Nothing contained in this Agreement shall preclude the School District from commenting to the Town upon the adequacy of public school sites or facilities, necessary in its judgment, to serve the residential land development application.

e. The Town agrees that before issuing a building permit for any residential dwelling unit not otherwise exempted under Section 5 below, it will confirm payment has been made to the School District for the Fair Contribution for Public School Sites or will require proof that land has been dedicated to the School District, according to paragraph 3.a. or 3.b. above.

4. Use of Fair Contribution for Public School Sites

a. The School District shall hold or deposit in trust for the purposes stated in paragraph 4.b., below, all funds it receives as Fair Contribution for Public School Sites, and all funds it may receive from the sale of land dedicated or conveyed as Fair Contribution for Public School Sites. The School District shall meet all requirements of C.R.S. §§ 29-1-801 to -803, if applicable. The School District shall be solely responsible for each Fair Contribution for Public School Sites it receives. No Fair Contribution for Public School Sites shall constitute revenue of the Town under the provisions of Article X, Section 20 of the Colorado Constitution.

b. The School District shall use all funds it receives as Fair Contribution for Public School Sites solely for acquisition, development, or expansion of public school sites or for capital facilities planning, site acquisition, or school site capital outlay purposes, including without limitation, related traffic signal costs to the extent funds from Fair Contribution for Public School Sites are available, within the senior high school feeder attendance area boundaries that include the residential dwelling unit for which the Fair Contribution for Public School Sites was paid. Subject to the limitations in this Agreement, the time for, nature, method, and extent of each public school site planning, acquisition, or development shall be within the sole discretion of the School District.

c. Except as otherwise provided in this Agreement, any funds received as Fair Contribution for Public School Sites the School District that have not been used for acquisition or development of public school sites within twenty (20) years of collection, shall be eligible for refund, with interest earned and credited according to C.R.S. §§ 29-1-801 to -803, to the person who made the Fair Contribution for Public School Sites. The person who made the Fair Contribution for Public School Sites may provide a written request to receive the unused funds twenty (20) years from the date the payments were made. If the person does not file a written claim for refund of the funds within the School District within ninety (90) days after expiration of the twenty (20) years, the Fair Contribution for Public School Sites refund shall be forfeited and revert to the School District to be utilized for capital facilities or improvements that will benefit the residence for which Fair Contribution for Public School Sites funds were paid.

d. The School District may request the Town to extend the twenty-year period of time specified in the previous subsection. Such request shall be made at a public hearing before the Town, which may for good cause shown, and in its discretion, extend such period of time as the Town deems reasonable and necessary.

5. Exemptions from Fair Contribution for Public School Sites

a. The following uses within the Town's boundaries shall be excepted from Fair Contribution for Public School Sites:

(1) Construction of any nonresidential building or structure;

(2) Alteration, replacement, or expansion of any legally existing building or structure with a comparable new building or structure which does not increase the number of residential dwelling units;

(3) Construction of any building or structure for limited term stay or for long term assisted living, including, but not limited to, bed and breakfast establishments, boarding or rooming houses, family-care homes, group-care homes, halfway houses, hotels, motels, nursing homes, or hospices; and

(4) Construction of any residential building or structure classified as senior housing, pursuant to the applicable federal or state laws or regulations then in effect.

6. Annual Report, Accounting, and Audit

a. The School District shall submit an annual report on or before June 1 of each year to the Town describing the School District's use of the Fair Contribution for Public School Sites funds during the preceding fiscal year. This report shall also include:

(1) A review of the assumptions and data upon which the Methodology is based, including student generation ratios, and attendance area boundaries;

(2) Statutory changes or changes in the Methodology, including the School Planning Standards, and in School District policies related to acquisition or construction of school sites and facilities; and

(3) Any recommended modifications to Fair Contribution for Public School Sites land areas or amounts included in the Methodology.

b. After receipt of the report, the Town shall review it, considering those matters listed in the previous subsection, and complete its review within ninety (90) days of receipt.

c. The School District shall establish and maintain a separate accounting system to ensure that all Fair Contribution for Public School Sites funds are used according to this Agreement.

d. The School District shall cause an audit to be performed annually of the Fair Contribution for Public School Sites funds it receives, uses, or expends under this Agreement. The audit shall be conducted according to the 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 for by the School District.

e. At any time the Town deems *reasonably* necessary, the School District shall honor the Town's request for an accounting from the chief financial officer of the School District concerning the School District's use of the Fair Contribution for Public School Sites.

7. Term of Agreement

The term of this Agreement shall commence on the Effective Date and continue for a period of ten (10) years thereafter unless renewed or extended by the mutual consent of the Town and the School District. However, either party may terminate this Agreement, at any time and for any reason, upon one year's written notice to the other party. Notwithstanding notice of termination, the provisions of this Agreement shall continue to apply to all residential land development applications filed prior to the effective date of termination.

8. Miscellaneous Provisions

a. Faith and Credit. Neither party shall extend the faith or credit of the other to any third person or entity.

b. Amendments. This Agreement may be amended only by mutual agreement of the Parties and shall be evidenced by a written instrument authorized and executed with the same formality as accorded this Agreement.

c. Notice. Any notice required by this Agreement shall be in writing. If such notice is hand delivered or personally served, it shall be effective immediately upon such delivery or service. If given by mail, it shall be certified with return receipt requested and addressed to the following addresses:

Town of Erie
Attention: Town Administrator

P.O. Box 750
Erie, CO 80516

St. Vrain Valley School District RE-1J
Attention: Superintendent
395 South Pratt Parkway
Longmont, Colorado 80501

Notice given by mail shall be effective upon receipt.

d. **Governing Law.** This Agreement and the rights and obligations of the Parties 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 Parties agree to cooperate in the defense of any claim or civil action that may be brought contesting the validity of this Agreement or the implementing ordinances. The School District shall be responsible for its attorneys' fees and for the Town's reasonable attorney's fees and, to the extent allowed by law, for payment of any final monetary judgment entered against the Town in any such action *for the recovery of any funds collected and paid to the School District for Fair Contributions for Public School Sites.* Upon receipt by the Town of any claim, or commencement of a civil action against the Town, the Town shall give the School District prompt written notice thereof following which the Parties agree to consult with each other regarding the claim and/or defense of the action and selection of counsel in connection therewith. Nothing contained in this Agreement shall constitute any waiver for the Town or the School District of the provisions of the Colorado Governmental Immunity Act or other applicable immunity defense. This provision shall survive expiration and termination of the Agreement and be enforceable until all claims are precluded by statutes of limitation.

g. **Provisions Construed as to Fair Meaning.** The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any party based upon any attributes to such party of the source of the language in question.

h. **Compliance with Ordinances and Regulations.** This Agreement shall be administered consistent with all current and future Town laws, rules, charters, ordinances, and regulations concerning land dedication or conveyance for public school sites, or payment in lieu of land dedication or conveyance for public school sites.

i. **No Implied Representations.** No representations, warranties, or certifications, express or implied, shall exist as between the Parties, except as specifically stated in this Agreement.

j. **No Third Party Beneficiaries.** None of the terms, conditions, or covenants in this Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than the Town or the School District receiving services or benefits under this Agreement shall be only an incidental beneficiary.

k. **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 debt or municipal financial obligation.

l. **Integrated Agreement and Amendments.** This Agreement is an integration of the entire understanding of the Parties with respect to the matters stated herein. The Parties shall only amend this Agreement in writing with the proper official signatures attached hereto.

m. **Waiver.** No waiver of any breach or default under this Agreement shall be a waiver of any other or subsequent breach or default.

IN WITNESS WHEREOF, the Parties have executed this Agreement which shall be in full force and effect the day and year first above written.

TOWN OF ERIE

By:_____
Mayor

ATTEST:

By_____
Town Clerk

Date:_____**2021**

ST. VRAIN VALLEY SCHOOL DISTRICT RE-1J

By: Jorie Siegrist
President, Board of Education

ATTEST:

By: Paula Reaves for Karen Ragland

Secretary, Board of Education

Date:_____**2021**

APPROVED AS TO LEGAL FORM:

_____
School District Attorney

Exhibit A

School Planning Standards And Calculation of In Lieu Fees

Town of Erie

Single Family							
		School Planning Standards					
	Number Of Units	**Projected Student Yield**	**Student Facility Standard**	**Site Size Standard Acres**	**Acres of Land Contribution**	**Developed Land Value**	**Cash-in-lieu Contribution**
Elementary	100	0.22	525	10	0.42	$94,416	
		22					
Middle Level	100	0.1	750	25	0.33	$94,416	
		10					
High School	100	0.11	1200	50	0.46	$94,416	
		11					
Total		43			1.21	$94,416	$114,311
Single Family Student Yield is .66							**$1,143 Per Unit**

Exhibit A

School Planning Standards And Calculation of In Lieu Fees

Town of Erie

Duplex/Triplex							
		School Planning Standards					
	Number Of Units	**Projected Student Yield**	**Student Facility Standard**	**Site Size Standard Acres**	**Acres of Land Contribution**	**Developed Land Value**	**Cash-in-lieu Contribution**
Elementary	100	0.2	525	10	0.38	$94,416	
		20					
Middle Level	100	0.09	750	25	0.30	$94,416	
		9					
High School	100	0.09	1200	50	0.38	$94,416	
		9					
Total		38			1.06	$94,416	$99,699
							$997
Duplex/Triplex Student Yield is .56							**Per Unit**

Exhibit A

School Planning Standards And Calculation of In Lieu Fees

Town of Erie

Multi-Family							
		School Planning Standards					
	Number Of Units	**Projected Student Yield**	**Student Facility Standard**	**Site Size Standard Acres**	**Acres of Land Contribution**	**Developed Land Value**	**Cash-in-lieu Contribution**
Elementary	100	0.15 15	525	10	0.29	$94,416	
Middle Level	100	0.06 6	750	25	0.20	$94,416	
High School	100	0.06 6	1200	50	0.25	$94,416	
Total		27			0.74	$94,416	$69,463
							$695 Per Unit
Multi-Family Student Yield is .25							

Exhibit A

School Planning Standards And Calculation of In Lieu Fees

Town of Erie

Condo/Townhouse							
		School Planning Standards					
	Number Of Units	**Projected Student Yield**	**Student Facility Standard**	**Site Size Standard Acres**	**Acres of Land Contribution**	**Developed Land Value**	**Cash-in-lieu Contribution**
Elementary	100	0.07 7	525	10	0.13	$94,416	
Middle Level	100	0.04 4	750	25	0.13	$94,416	
High School	100	0.04 4	1200	50	0.17	$94,416	
Total		15			0.43	$94,416	$40,914
							$409
Condo/Townhouse Student Yield is .29							**Per Unit**

Exhibit A

School Planning Standards And Calculation of In Lieu Fees

Town of Erie

Mobile Home							
		School Planning Standards					
	Number Of Units	**Projected Student Yield**	**Student Facility Standard**	**Site Size Standard Acres**	**Acres of Land Contribution**	**Developed Land Value**	**Cash-in-lieu Contribution**
Elementary	100	0.16	525	10	0.30	$94,416	
		16					
Middle Level	100	0.09	750	25	0.30	$94,416	
		9					
High School	100	0.09	1200	50	0.38	$94,416	
		9					
Total		34			0.98	$94,416	$92,505
Mobile Home Student Yield is .42							**$925 Per Unit**