

1 Section 3

2 To the extent only that they conflict with this ordinance, the Council repeals any
3 conflicting ordinances or parts of ordinances. The provisions of this ordinance are severable, and
4 invalidity of any part shall not affect the validity or effectiveness of the rest of this ordinance.
5 Neither the adoption of this ordinance nor its action repealing or amending any other ordinance
6 of the City of Longmont shall in any manner affect the validity of any pre-existing transactions
7 entered into before the effective date of this ordinance.

8 Introduced this 24th day of May, 2016.

9 Passed and adopted this 14th of June, 2016.

12 Dennis L. Coombe
13 _____
14 MAYOR



16 ATTEST:

18 Valeria D. Stett
19 _____
20 CITY CLERK

23 NOTICE: THE COUNCIL WILL HOLD A PUBLIC HEARING ON THIS ORDINANCE AT
24 7:00 P.M. ON THE 14th DAY OF June, 2016, IN THE
25 LONGMONT COUNCIL CHAMBERS.

28 APPROVED AS TO FORM:

30 [Signature]
31 _____
32 ASSISTANT CITY ATTORNEY

30 4/29/16
31 _____
32 DATE

34 S. Snell
35 _____
36 PROOFREAD

34 4/29/16
35 _____
36 DATE

1 APPROVED AS TO FORM AND SUBSTANCE:

2
3
4
5
6
7

Loni Marsh
ORIGINATING DEPARTMENT

5-9-14
DATE

CA File: 10024

ATTACHMENT A

EXHIBIT A

THIRD AMENDED INTERGOVERNMENTAL AGREEMENT CONCERNING
FAIR CONTRIBUTIONS FOR PUBLIC SCHOOL SITES BETWEEN THE CITY OF
LONGMONT AND THE ST. VRAIN VALLEY SCHOOL DISTRICT RE-1J

EFFECTIVE NOVEMBER 15, 1995

AMENDED JUNE 14, 2016

**THIRD AMENDED INTERGOVERNMENTAL AGREEMENT CONCERNING
FAIR CONTRIBUTIONS FOR PUBLIC SCHOOL SITES BETWEEN THE
CITY OF LONGMONT AND THE ST. VRAIN VALLEY SCHOOL DISTRICT RE-1J**

THIS AGREEMENT is entered into by and between the City of Longmont, Colorado (City), a municipal corporation, and the St. Vrain Valley School District RE-1J (School District), a political subdivision of the State of Colorado, to be effective as of the 14th day of June, 2016 (Effective Date).

RECITALS

WHEREAS, pursuant to C.R.S. § 31-23-202, as amended, and Article XX of the Colorado Constitution, the City Council of the City of Longmont has adopted the Longmont Area Comprehensive Plan (LACP), as updated and amended from time to time, which provides goals and policies to plan for the orderly growth of the City.

WHEREAS, local governments are encouraged and authorized to cooperate or contract with other units of government, pursuant to C.R.S. § 29-20-105 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.

WHEREAS, the City and School District have cooperated with respect to managing the orderly growth of the Community of Longmont by identifying potential public school site locations in the LACP.

WHEREAS, growth in residential land development and the construction of new residential dwellings in the City necessitates the acquisition of additional public school sites to accommodate the corresponding increase 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.

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

WHEREAS, requiring Fair Contribution for Public School Sites implements the goals and policies of the LACP to make provisions 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.

WHEREAS, the municipal charter grants the City the power of local self-government and home rule, and it is a reasonable exercise of this power 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.

WHEREAS, 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 the welfare of the City's citizens.

WHEREAS, the City 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 City, agree it is in the best interest of the citizens of the City to mutually enter into an intergovernmental agreement for the purpose of providing for Fair Contribution for Public School Sites, as provided in this Agreement.

WHEREAS, the City and School District do hereby define the rights and obligations of each entity with respect to planning for new public school sites and Fair Contribution for Public School Sites.

AGREEMENT

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

1. School Site Coordination and Development Referrals

- a. The City has adopted the LACP which identifies potential public school locations in the Longmont Planning Area. The School District agrees to locate future public school sites in conformity with the LACP designations, insofar as is feasible, and to consult with and advise the City in writing in advance of public school site acquisition and site development.
- b. The City shall refer to the School District all residential land development applications for review and comment concerning the adequacy of public school sites and facilities. The City will consider the School District's comments in conjunction with the review and processing of each individual residential development application, and will implement 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 City that may have influence or effect on property owned by or activities of the School District, the

City 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 City.

- c. The City shall cooperate with the School District in any amendments to the LACP. Such cooperation shall consist of providing advance notice of any pending or forthcoming LACP amendments to the School District and formal referral during the City review process. The City shall consider the comments of the School District in making its decision with regard to modifications or amendments to the LACP.

2. Methodology

- a. Contemporaneous with the Effective Date and the effective date of the City municipal code amendment requiring Fair Contribution for Public School Sites, the City 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 amended and adopted a methodology, dated July 11, 2006, and incorporated into the Longmont Municipal Code at section 15.07.020(C) and by Longmont Ordinance O-2006-50 (Methodology), to determine Fair Contribution for Public School Sites for five categories of dwelling units. The parties agree the Methodology has been developed in a manner so as to fairly apportion the cost of acquiring public school sites made necessary by new residential developments. Copies of the Methodology, as defined below, are on file in the respective offices of the parties.
- 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 the five types of residential dwellings (single family homes, duplexes/triplexes, multi-family units, condos/townhomes, and mobile homes). The City and the School District agree that the Methodology shall apply to new residential construction within the City. The Methodology shall be the basis for computing the Fair Contribution for Public School Sites for new residential construction. The City 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 not be limited to, the following factors:
 - i. School planning standards which establish the student yield 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;
- ii. The capacity demand for each category of school facility resulting from each category of residential dwelling (single family, duplexes/triplexes, multifamily units, condos/townhomes, and mobile homes);
 - iii. The means for determining the per acre fair market value of land for each type of residential dwelling; and
 - iv. 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 City and the School District. A copy of the updated Methodology shall be furnished to the City within 30 days after its adoption by the School District. The City 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 making any development application to the City (Developer) as part of a residential land development application that includes land identified in the LACP for a public school site ("School Site"), shall dedicate or convey such School Site to the School District. Residential development applications that do not include School Sites shall 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 referenced Methodology. This shall not preclude the School District and any Developer from mutually agreeing to resolve the issue of Fair Contribution for Public School Sites in a manner other than stated above.
- b. If the Fair Contribution for Public School Sites includes the dedication of land, according to paragraph 3.s above, the City agrees, before recording of the final plat, to require proof that the dedication has been made to the School District in accordance with the following requirement:
 - i. The Developer shall convey title to the land in 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 to the date of conveyance or dedication.
 - ii. At the time of conveyance, the Developer shall provide an ALTA title insurance policy insuring the title described above in an amount equal to the fair market value of the dedicated property.

- iii. The Developer shall locate and configure the dedicated or conveyed land so that, as determined by the School District, it can properly accommodate a school campus.
 - iv. The Developer shall satisfy the City's water rights requirement for the land conveyed, before conveying the property to the school district.
 - v. In addition to any land dedicated or conveyed, the Developer shall provide to the School District an option to purchase abutting lands identified as a school site at their 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 the LACP.
- c. If the Fair Contribution includes the dedication of land, the Developer shall, no later than the issuance of the first building permit for the subdivision, construct or provide for the payment for the construction of one-half of the adjacent street development costs for the land dedicated to the School District under this section, construct or provide for payment of the costs associated with making improvements for water, sewer, gas, electric, and other normal utilities stubbed to the dedicated land; and grade or provide payment for the overlot grading of the dedicated land. The Developer shall also furnish any off-site easements that the School District needs to develop the site.
 - d. The City agrees that before issuing a building permit for any residential dwelling unit not otherwise exempted under Section 5 below, it will require proof that the Fair Contribution for Public School Sites, according to paragraph 3.a. above, has been received by the School District. The superintendent of the School District, or the superintendent's designee, shall provide such proof in a timely manner to the city manager of the City, or the city manager's designee.
 - e. Nothing contained in this Agreement shall preclude the School District from commenting to the City upon the adequacy of public school sites or facilities, necessary in its judgment, to serve the proposed residential land development project.

4. Use of Fair Contribution for Public School Sites

- a. The School District shall hold or deposit in trust for public School Sites 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 or 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 City 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 designated in the LACP within the 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 acquisition shall be within the sole discretion of the School District.
- c. Except as otherwise provided in this Agreement, the School District shall tender for refund and funds received as Fair Contribution for Public School Sites, the School District has not used for acquisition or development of public School Sites within nine years of collection with interest earned and credited according to C.R.S. §§ 29-1-801 to -803, to the Developer who made the Fair Contribution for Public School Sites. The School District shall give written notice by first-class mail to the Developer who made the Fair Contribution for Public School Sites at his or her address as reflected in the records maintained by the School District. If the Developer does not file a written claim for refund of the funds with the School District within 90 days of the mailing of such notice, the Fair Contribution for Public School Sites refund shall be forfeited and surrendered to the City for capital facilities or improvements that will benefit the residence for which Fair Contribution for Public School Sites funds were paid.

5. Exemptions From Fair Contribution for Public School Sites

- a. The following uses within the City's boundaries shall be excepted from Fair Contribution for Public School Sites:
 - i. Construction of any nonresidential building or structure;
 - ii. 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;
 - iii. 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
 - iv. Construction of any residential building or structure classified as housing for older persons, pursuant to the Federal Fair Housing Act then in effect.

6. Annual Report, Accounting, and Audit

- a. The School District shall submit an annual report the first quarter of each calendar year to the City describing the School District's use of the Fair Contribution for Public School Sites funds during the preceding fiscal year. The report shall also 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 Methodology, including the School Planning Standards, and in School District policies related to acquisition or construction of School Sites and facilities; and
 - iii. 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 City shall review it, considering those matters listed in the previous subsection, and complete its review within 60 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 Schools Sites funds it receives, uses, or expends under this Agreement. The audit shall be conducted according to the generally accepted accounting principles for government entities. A copy of said audit shall be furnished to the City. The cost of this audit shall be paid for by the School District.
- e. Any time the City deems necessary, the School District shall honor the City'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 years thereafter unless renewed or extended by the mutual consent of the City and the School District. However, either party may terminate this Agreement, at any time and for any reason, upon one year written notice to the other party.

8. Miscellaneous Provisions

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

City of Longmont
Attention: City Manager
350 Kimbark St.
Longmont, CO 80501

St. Vrain Valley School District RE-1J
Attn: Superintendent
395 S. Pratt Parkway
Longmont, CO 80501

Notice given by mail shall be effective upon receipt.

- 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 portion of the Agreement.
- f. **Indemnification.** The parties agree to cooperate in the defense of any legal action that may be brought contesting the validity of this Agreement or the implementing ordinances. The School District shall be responsible for its attorneys' fees and, to the extent allowed by law, for the payment of any final monetary judgment entered against the City in any such action. Nothing contained in this Agreement shall constitute any waiver by the City or the School District of the provisions of the Colorado Governmental Immunity Act or other applicable immunity defense. This provision shall survive 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 attribution 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 City 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, 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 City 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 City or the School District, or a collection or payment guarantee by the City

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 thereto.
- 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 hereto have executed this Agreement which shall be in full force and effect the day and year first above written.

CITY OF LONGMONT



Dennis Z Coombs
MAYOR

6/15/16
DATE

ATTEST:

Valerie H. Stutz
CITY CLERK

APPROVED AS TO FORM:

[Signature]
ASSISTANT CITY ATTORNEY

4/29/16
DATE

[Signature]
PROOFREAD

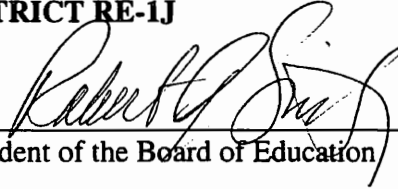
4/29/16
DATE

APPROVED AS TO FORM AND SUBSTANCE:

[Signature]
ORIGINATING DEPARTMENT

5/19/16
DATE

**ST. VRAIN VALLEY SCHOOL
DISTRICT RE-1J**

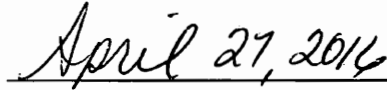


President of the Board of Education

ATTEST:



Secretary

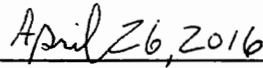


Date

APPROVED AS TO LEGAL FORM:



School District Attorney



Date

**School Planning
Standards And
Calculation of
Land Dedication Requirements**

Single Family		School Planning Standards				Acres of Land		Cash-in-lieu Contribution	
Number Of Units	Projected Student Yield	Student Facility Standard	Site Size Acres	Acres of Land Contribution	Developed Land Value				
100	0.21	525	10	0.40762	\$100,092				
Equation: (Number of Students/Elem. Student Facility Size) * Elem. Site Size Standard = Acres of Land Contribution									
100	0.12	750	25	0.39667	\$100,092				
Equation: (Number of Students/Middle Student Facility Size) * Middle Site Size Standard = Acres of Land Contribution									
100	0.16	1200	50	0.68333	\$100,092				
Equation: (Number of Students/High School Student Facility Size) * High School Site Size Standard = Acres of Land Contribution									
100	49.7			1.48762	\$100,092				
Equation: Elem. Acreage + Middle Acreage + High School Acreage = Total Acres of Land Contribution									
Single Family Student Yield is .497						\$1,489			
						Per Unit			

**School Planning
Standards And
Calculation of
Land Dedication Requirements**

Duplex/Triplex		School Planning Standards						
Number Of Units	Projected Student Yield	Student Facility Standard	Site Size Acres	Acres of Land Contribution	Developed Land Value	Cash-in-lieu Contribution		
100	0.20	525	10	0.37524	\$100,092			
Equation: (Number of Students/Elem. Student Facility Size) * Elem. Site Size Standard = Acres of Land Contribution								
100	19.7	750	25	0.29667	\$100,092			
Equation: (Number of Students/Middle Student Facility Size) * Middle Site Size Standard = Acres of Land Contribution								
100	0.09	1200	50	0.35833	\$100,092			
Equation: (Number of Students/High School Student Facility Size) * High School Site Size Standard = Acres of Land Contribution								
100	37.20			1.03024	\$100,092			
Equation: Elem. Acreage + Middle Acreage + High School Acreage = Total Acres of Land Contribution								
Duplex/Triplex Student Yield is .372					\$1,031			
					Per Unit			

**School Planning
Standards And
Calculation of
Land Dedication Requirements**

Multi-Family		School Planning Standards						
Number Of Units	Projected Student Yield	Student Facility Standard	Site Size Acres	Acres of Land Contribution	Developed Land Value	Cash-in-lieu Contribution		
100	0.15	525	10	0.27619	\$100,092			
		14.5	Number of Students = No. of Units * Student Yield					
		Equation: (Number of Students/Elem. Student Facility Size) * Elem. Site Size Standard = Acres of Land Contribution						
Middle Level	100	0.06	750	25	0.18333	\$100,092		
		5.5	Number of Students = No. of Units * Student Yield					
		Equation: (Number of Students/Middle Student Facility Size) * Middle Site Size Standard = Acres of Land Contribution						
High School	100	0.06	1200	50	0.25417	\$100,092		
		6.1	Number of Students = No. of Units * Student Yield					
		Equation: (Number of Students/High School Student Facility Size) * High School Site Size Standard = Acres of Land Contribution						
Total	100	26.10			0.71369	\$100,092	\$71,435	
		Equation: Elem. Acreage + Middle Acreage + High School Acreage = Total Acres of Land Contribution						
Multi-Family Student Yield is 261							\$714	
							Per Unit	

**School Planning
Standards And
Calculation of
Land Dedication Requirements**

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	525	10	0.13714	\$100,092		
		Equation: $(\text{Number of Students}/\text{Elem. Student Facility Size}) * \text{Elem. Site Size Standard} = \text{Acres of Land Contribution}$						
Middle Level	100	0.04	750	25	0.13000	\$100,092		
		Equation: $(\text{Number of Students}/\text{Middle Student Facility Size}) * \text{Middle Site Size Standard} = \text{Acres of Land Contribution}$						
High School	100	0.04	1200	50	0.16667	\$100,092		
		Equation: $(\text{Number of Students}/\text{High School Student Facility Size}) * \text{High School Site Size Standard} = \text{Acres of Land Contribution}$						
Total	100	15.10			0.43381	\$100,092	\$43,421	
		Equation: $\text{Elem. Acreage} + \text{Middle Acreage} + \text{High School Acreage} = \text{Total Acres of Land Contribution}$						
Condo/Townhouse Student Yield is .15							\$434	
							Per Unit	

**School Planning
Standards And
Calculation of
Land Dedication Requirements**

Mobile Home		School Planning Standards			Acres of Land	Developed Land Value	Cash-in-lieu Contribution
Number Of Units	Projected Student Yield	Student Facility Standard	Site Size Standard Acres	Acres of Land Contribution	Developed Land Value	Cash-in-lieu Contribution	
100	0.16	525	10	0.30095	\$100,092		
Equation: (Number of Students/Elem. Student Facility Size) * Elem. Site Size Standard = Acres of Land Contribution							
100	0.09	750	25	0.28333	\$100,092		
Equation: (Number of Students/Middle Student Facility Size) * Middle Site Size Standard = Acres of Land Contribution							
100	0.09	1200	50	0.37500	\$100,092		
Equation: (Number of Students/High School Student Facility Size) * High School Site Size Standard = Acres of Land Contribution							
100	0.09	1200	50	0.37500	\$100,092		
Equation: Elem. Acreage + Middle Acreage + High School Acreage = Total Acres of Land Contribution							
100	33.30			0.95929	\$100,092	\$96,017	
Mobile Home Student Yield is .333							
						\$960	
						Per Unit	