

RESOLUTION 2019-30

A RESOLUTION OF THE TOWN OF LYONS APPROVING AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE TOWN OF LYONS AND THE ST. VRAIN VALLEY SCHOOL DISTRICT RE-1J REGARDING FAIR CONTRIBUTION FOR PUBLIC SCHOOL SITES FOR CERTAIN NEW RESIDENTIAL DEVELOPMENT

WHEREAS, statutory towns and school districts are authorized by Section 22-54-102(3)(a), C.R.S., to enter into intergovernmental agreements for certain public purposes and specifically to provide for funding for school capital construction projects; and

WHEREAS, the Town of Lyons is further authorized by Section 31-12-108.5 and 110(2), C.R.S. to impose conditions upon annexations relating to the impact of the annexations upon local schools, and by Section 31-23-214, C.R.S. and the Town's subdivision regulations to impose reasonable conditions upon proposed subdivisions to protect the health, safety and welfare of the Town's residents; and

WHEREAS, the Town's Board of Trustees desires to authorize an intergovernmental agreement (the "IGA") with the St. Vrain Valley School District RE-1J (the "District") to address the need for funding the acquisition of school sites within the Town of Lyons for Lyons residents; and

WHEREAS, the IGA contemplates the possible need for amendments to the Town's subdivision regulations to implement the terms of the IGA, and the Board wishes to reserve the right to make such amendments within the time specified in the IGA, if such amendments are deemed necessary; and

WHEREAS, in approving this Resolution, the Board of Trustees is expressly relying, in part, upon the indemnification afforded to the Town by the District pursuant to paragraph 12 of the IGA.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, COLORADO:

Section 1. The above recitals are hereby incorporated by reference.

Section 2. An intergovernmental agreement (IGA) in a form substantially similar to that attached to this Resolution, which is to be made by and between the Town of Lyons and the St. Vrain Valley School District RE-1J, is hereby approved by the Board of Trustees.

Section 3. The Board authorizes further revision or editing of the IGA only to correct grammatical, typographical, and other minor errors which corrections do not change the obligations, benefits, or requirements presented in the Agreement, subject to the approval of such corrections by the Town Administrator, Town Attorney, and Mayor.

Section 4. As such IGA may be revised and presented to the Mayor, the Mayor is hereby authorized to execute the Agreement. The Town Clerk is hereby instructed to attest the Mayor's signature and to attach to this Resolution the fully executed IGA following execution.

Section 5. This resolution shall take effect immediately upon adoption.

ADOPTED this 18th DAY OF MARH 2019.

TOWN OF LYONS

By: *Connie Sullivan*
Connie Sullivan, Mayor

ATTEST:

Deb Anthony
Deb Anthony, MMC Town Clerk



**INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF LYONS
AND
THE ST. VRAIN VALLEY SCHOOL DISTRICT RE-1J
CONCERNING FAIR CONTRIBUTIONS FOR PUBLIC SCHOOL SITES**

- 1. PARTIES.** The parties to this *Intergovernmental Agreement Concerning Fair Contributions For Public School Sites* ("IGA") are: **THE TOWN OF LYONS**, a Colorado municipal corporation, ("Town"), and the **ST. VRAIN VALLEY SCHOOL DISTRICT RE-1J**, a political subdivision of the State of Colorado, ("District").
- 2. RECITALS AND PURPOSES.** The Town's municipal boundaries lie within the boundaries of the District, and the Town's resident children attend the District's schools located within the Town. Pursuant to Section 22-54-102(3)(a), C.R.S., the parties may enter into intergovernmental agreements to cooperate with each other to assist in the funding of the District's capital construction projects, provided such funding is from a source of revenue that is otherwise authorized by law and is not from impact fees. Such statute further provides that the prohibition on the utilization of impact fees in such agreements "shall not be construed to restrict the authority of any local government to require the reservation or dedication of sites and land areas for schools or the payment of moneys in lieu thereof" if such local government possesses the legal authority to require such reservations, dedications, or payments in lieu thereof. When considering an annexation petition, the Town is statutorily authorized by Sections 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 Section 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. Furthermore, the Town's subdivision regulations provide that in considering land use applications, the Town may "impose reasonable conditions" which are necessary to ensure compliance with the comprehensive plan and "to protect the welfare of the Town and its residents." The parties agree that it is in the best interests of the citizens of the Town (who are also citizens of the District) to mutually enter into a cooperative agreement to adequately provide for Fair Contribution for Public School Sites within the Town. The purpose of this IGA is to set forth the terms, conditions, rights and obligations of each party with respect to the planning, collection, and use of Fair Contribution for Public School Sites. Accordingly, the parties covenant and agree to the following.
- 3. TERM.** This Intergovernmental Agreement shall commence upon the Effective Date and continue thereafter for a period of ten (10) years thereafter, unless sooner terminated. Either party may terminate this Intergovernmental Agreement at any time with or without cause, upon one year's written notice to the other party. Notwithstanding the foregoing, either party may terminate this Agreement for any reason upon sixty (60) days' notice delivered to the other party during the first 365 days following the Effective Date. For purposes of this Intergovernmental Agreement, the term "Effective Date" shall mean the date when it is approved by both parties' governing bodies or authorized officers.
- 4. BEST INTERESTS OF TOWN AND RESIDENTS.** The parties acknowledge and agree that continued growth in residential land development necessitates the acquisition of additional public school sites and/or the enlargement or the new construction of school facilities to accommodate the corresponding increases in the student population resulting from such growth. Requiring land dedications or conveyances for public school sites, or payments in lieu of such land dedications/conveyances, (herein collectively referred to as "*Fair Contribution for Public School Sites*") will provide a portion of the land/facilities to meet such demands. The Town agrees that imposing such Fair Contribution for Public School Sites is in the best interests of the health, safety,

and welfare of the Town and its residents as contemplated by the Town's Subdivision Regulations' authorizations for imposing reasonable conditions upon land use approvals.

5. SCHOOL SITE COORDINATION AND DEVELOPMENT REFERRALS.

5.1 The District agrees to locate future public school sites in conformity with the adopted plan of the Town, insofar as is feasible, and to consult with and advise the Town in writing in advance of any public school site acquisition or public school site development.

5.2 The Town shall refer to the District all residential annexation petitions and subdivision applications (including major and minor subdivisions and plat amendments) that require a public hearing before the Planning Commission and/or the Board of Trustees proposed within or affecting the District attendance area (herein, "*Residential Land Development Applications*") for the District's review and comment concerning the adequacy of public school sites and facilities. The Town will consider the 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 Intergovernmental Agreement and the municipal code and regulations then in effect.

5.3 If a non-Residential Land Development Application is filed with the Town that may, in the opinion of the Town, have an influence or effect on property owned by, or on any school activities of, the District, the Town shall also refer information pertaining to that application to the District for review and comment. The District agrees to promptly review the referred development application and promptly submit its comments, recommendations, and requests to the Town by the deadline stated in any cover letter or referral letter accompanying the application from the Town to the District. Failure to timely respond may be deemed by the Town as a response from the District of "no comment" concerning the referred application.

6. METHODOLOGY.

6.1 Contemporaneous with the Effective Date (or the effective date of—any amendments to the Town subdivision regulations and requirements requiring Fair Contribution for Public School Sites, if such amendments are deemed necessary by the Town's attorney as a condition precedent to implementation of this Agreement) the Town agrees to enforce such amendment as a precondition to the lawfully authorized construction of new residential dwelling units not otherwise exempted under Section 9 below. Town shall utilize its good faith best efforts to promptly enact such amendments if so required, but in any event no later than 60 days after the Effective Date.

The District has adopted a methodology ("*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 development.

6.2 As part of the Methodology, the 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 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.

6.3 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:

- a. 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 District;
- b. 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);
- c. The means for determining the per acre fair market value of land for each type of residential dwelling; and
- d. The procedure for calculating Fair Contribution for Public School Sites required and applicable to each type of residential dwelling.

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

6.5 It is the intent of the parties that the Methodology and any amendment thereto shall be in conformity with the requirements of Section 29-20-203, C.R.S.

7. FAIR CONTRIBUTION FOR PUBLIC SCHOOL SITES.

7.1 As Fair Contribution for Public School Sites, any person or entity, as a condition of approval of the person or entity's applicable Residential Land Development Application shall be required to dedicate or convey land for a public school site to the District, or in the event the dedication of land is not deemed feasible or in the best interests of the District as determined by the Superintendent or designee, the District may require a payment in lieu of land dedication or conveyance to the District. The manner and amount of either type of Fair Contribution for Public School Sites shall be as stated in this Intergovernmental Agreement and the incorporated Methodology. This shall not preclude the 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.

7.2 If the Fair Contribution for Public School Sites includes the dedication of land, according to paragraph 7.1 above, the Town agrees before recording of the final plat to require proof that the dedication has been made to the District in accordance with the following requirements:

- a. The person or entity has conveyed to the District by general warranty deed, title to the land slated for dedication, which title is to be free and clear of all liens, encumbrances, and exceptions (except those approved in writing by the District),

including, without limitation, real property taxes, which will be prorated to the date of conveyance or dedication.

b. At the time of dedication or conveyance, the person or entity shall provide a title insurance commitment and policy in an amount equal to the fair market value of the dedicated property. 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 its proportionate share of the street development costs, if any, 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.

7.3 The Town agrees that before issuing a building permit for any residential dwelling unit not otherwise exempted under Section 8 below, it will obtain payment to the District for the Fair Contribution for Public School Sites or will require proof that land has been dedicated to the District, according to paragraph 7.1 or 7.2 above. These collected funds shall be forwarded to the Assistant Superintendent for Auxiliary Services at the District in a timely manner with the legal description of the lot indicated. The Superintendent of the District, or the Superintendent's Designee, shall provide proof of any land dedication to the Town Administrator of the Town, or the Town Administrator's Designee.

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

8. USE OF FAIR CONTRIBUTION FOR PUBLIC SCHOOL SITES.

8.1 The 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 District shall meet all requirements of Section 29-1-801 to 803, C.R.S., if applicable. The 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, and such dedications, conveyances, or payments shall be deemed exempt from the Town's calculation of fiscal year spending under Article X, Section 20(2)(e) of the Colorado Constitution.

8.2 The 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 within the senior high school feeder attendance area boundaries that include the residential dwelling units for which the Fair Contribution for Public School Sites was paid. Subject to the limitations in this Intergovernmental 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 District.

8.3 Except as otherwise provided in this Intergovernmental Agreement, any funds received as Fair Contribution for Public School Sites the District has not used for acquisition or development of public school sites within fifteen years of collection it shall tender for refund, with interest earned and credited according to Section 29-1-801 to 803, C.R.S., to the person or entity who made the Fair Contribution for Public School Sites. The District shall give written notice by first-class mail to the person who made the Fair Contribution for Public School Sites at his or her address as reflected in the records maintained by the District. If

the person does not file a written claim for refund of the funds within the District within 90 days of the mailing of such notice, the Fair Contribution for Public School Sites refund shall be forfeited and revert to the 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.

8.4 The District may request the Town to extend the fifteen-year period of time specified in the previous subsection. Such request shall be made at the 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.

9. EXEMPTIONS FROM FAIR CONTRIBUTION FOR PUBLIC SCHOOL SITES.

9.1 The following uses within the Town's boundaries shall be exempted from Fair Contribution for Public School Sites:

- a. Construction of any non-residential building or structure;
- b. Alteration, replacement with a comparable building or structure, or expansion of any legally existing building or structure provided such alterations, replacement, or expansion does not increase the number of residential dwelling units;
- c. 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; or
- d. Construction of any residential building or structure classified as housing for older persons, pursuant to the Federal Fair Housing Act then in effect.

9.2 The Town may request, and the District may grant, an exemption from the Fair Share Contribution of a dwelling unit or of dwelling units where the Town demonstrates to the District that good cause exists to justify an exemption. For purposes of this Intergovernmental Agreement, "good cause" shall include, but not be limited to, a showing by the Town that a unit or units will significantly or substantially advance one or more legislatively established planning policies of the Town and that the waiver or exemption will directly assist the Town in achieving the policy of policies.

10. ANNUAL REPORT, ACCOUNTING, AND AUDIT.

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

- a. A review of the assumptions and data upon which the Methodology is based, including student generation ratios, and attendance area boundaries;
- b. Statutory changes or changes in the Methodology, including the School Planning Standards, and in District policies related to acquisition or construction of school sites and facilities; and
- c. Any recommended modifications to Fair Contribution for Public School Sites land areas or amounts included in the Methodology.

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

10.3 The 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 Intergovernmental Agreement.

10.4 The 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 Intergovernmental 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 District.

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

11. NOTICES. Any notice required by this Intergovernmental 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 Lyons
Attention: Town Administrator
432 5th Avenue
P.O. Box 49
Lyons, CO 80540

St. Vrain Valley School District RE-1J
Att'n: Superintendent
395 South Pratt Parkway
Longmont, CO 80501

Notice given by mail shall be effective upon mailing.

12. INDEMNIFICATION. The parties agree to cooperate in the defense of any claim or civil action that may be brought contesting the validity of this Intergovernmental Agreement or the implementing ordinances. The District shall be responsible for its attorneys' fees and for the Town's reasonable attorneys' fees and costs and, to the extent allowed by law, for payment of any final monetary judgment entered against the Town, in any such action. Upon receipt by the Town of any claim, or commencement of a civil action against the Town, the Town shall give the 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 Intergovernmental Agreement shall constitute any waiver for the Town or the District of the provisions of the Colorado Governmental Immunity Act or other applicable immunity defense. This provision shall survive expiration and termination of the Intergovernmental Agreement, and be enforceable until all claims are precluded by statutes of limitation.

13. NO THIRD PARTY BENEFICIARIES. None of the terms, conditions, or covenants in this Intergovernmental 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 District receiving services or benefits under this Intergovernmental Agreement shall be only an incidental beneficiary.

14. FINANCIAL OBLIGATIONS. This Intergovernmental Agreement shall not be deemed a pledge of the credit of the Town or the District, or a collection or payment guarantee by the Town to the District. Nothing in this Intergovernmental Agreement shall be construed to create a multiple-fiscal year direct or indirect municipal debt or municipal financial obligation.

15. **ADDITIONAL DOCUMENTS OR ACTION.** The parties agree to execute any additional documents and to take any additional action necessary to carry out this Intergovernmental Agreement.

16. **COUNTERPARTS.** This Intergovernmental Agreement may be executed in several counterparts and, as so executed, shall constitute one Intergovernmental Agreement, binding on all the parties even though all the parties have not signed the same counterpart. Any counterpart of this Intergovernmental Agreement which has attached to it separate signature pages, which altogether contain the signatures of all the parties, shall be deemed a fully executed instrument for all purposes.

17. **INTEGRATION AND AMENDMENT.** This Intergovernmental Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Intergovernmental Agreement may be amended only by an instrument in writing signed by the parties.

18. **EXHIBITS.** All exhibits referred to in this Intergovernmental Agreement are, by reference, incorporated in this Intergovernmental Agreement for all purposes.

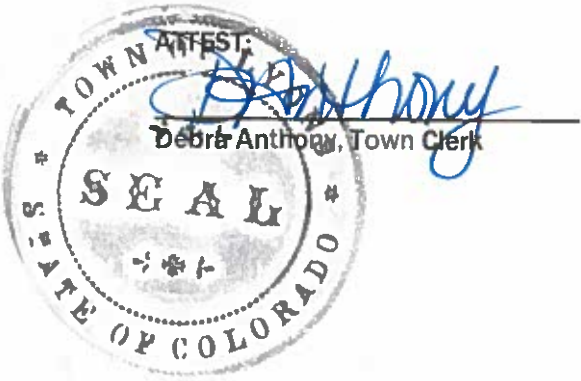
19. **SEVERABILITY.** If any provision of this Intergovernmental Agreement is declared by an arbitrator or court of competent jurisdiction to be invalid, void or unenforceable, such provision shall be deemed to be severable, and all other provisions of this Intergovernmental Agreement shall remain fully enforceable, and this Intergovernmental Agreement shall be interpreted in all respects as if such provision were omitted.

20. **WAIVER OF BREACH.** The waiver by any party to this Intergovernmental Agreement of a breach of any term or provision of this Intergovernmental Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

21. **ALTERNATIVE DISPUTE RESOLUTION.** In the event of any dispute or claim arising under or related to this Intergovernmental Agreement, the parties shall use their best efforts to settle such dispute or claim through good faith negotiations with each other. If such dispute or claim is not settled through negotiations within 30 days after the earliest date on which one party notifies the other party in writing of its desire to attempt to resolve such dispute or claim through negotiations, then the parties agree to attempt in good faith to settle such dispute or claim by mediation conducted under the auspices of the Judicial Arbitrator Group (JAG) of Denver, Colorado or, if JAG is no longer in existence, or if the parties agree otherwise, then under the auspices of a recognized established mediation service within the State of Colorado. Such mediation shall be conducted within 60 days following either party's written request. If such dispute or claim is not settled through mediation, then either party may initiate a civil action in the District Court for Boulder County.

DATED: March 30, 2016
2019

TOWN OF LYONS
By: [Signature]
Connie Sullivan, Mayor



Dated: September 28, 2016

ST. VRAIN VALLEY SCHOOL DISTRICT RE-1J

By:


Robert J. Smith, President
Board of Education

ATTEST:


Debbie Lammers, Secretary
Board of Education

School Planning
Standards And
Calculation of
In Lieu Fees

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	0.15 14.6	525	10	0.28	\$49,466	
Middle Level	100	0.09 9.1	750	25	0.30	\$49,466	
High School	100	0.13 13	1200	50	0.53	\$49,466	
Total		36.5			1.11	\$49,466	\$55,143
Single Family Student Yield is .37							\$551 Per Unit

School Planning
Standards And
Calculation of
In Lieu Fees

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	0.20 19.7	525	10	0.38	\$49,466	
Middle Level	100	0.09 8.9	750	25	0.30	\$49,466	
High School	100	0.09 8.6	1200	50	0.36	\$49,466	
Total		37.2			1.03	\$49,466	\$50,962
Duplex/Triplex Student Yield is .38							\$510 Per Unit

School Planning
Standards And
Calculation of
In Lieu Fees

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 14.5	525	10	0.28	\$49,466	
Middle Level	100	0.06 5.5	750	25	0.18	\$49,466	
High School	100	0.06 6.1	1200	50	0.25	\$49,466	
Total		26.1			0.71	\$49,466	\$35,303
Multi-Family Student Yield is .26							\$353 Per Unit

School Planning
Standards And
Calculation of
In Lieu Fees

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 7.2	525	10	0.14	\$49,466	
Middle Level	100	0.04 3.9	750	25	0.13	\$49,466	
High School	100	0.04 4	1200	50	0.17	\$49,466	
Total		15.1			0.43	\$49,466	\$21,459
Condo/Townhouse Student Yield is .15							\$215 Per Unit

School Planning
Standards And
Calculation of
In Lieu Fees

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 15.8	525	10	0.30	\$49,466	
Middle Level	100	0.09 8.5	750	25	0.28	\$49,466	
High School	100	0.09 9.0	1200	50	0.38	\$49,466	
Total		33.3			0.96	\$49,466	\$47,452
Mobile Home Student Yield is .33							\$475 Per Unit