

SCHMIDT PROPERTY
PUBLIC TRAIL CONSTRUCTION
COMPREHENSIVE DEVELOPMENT PLAN
INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (“Amendment Agreement”) is entered into by and between the Town of Erie, a Colorado statutory municipal corporation (Erie), the County of Boulder, a body politic and corporate of the State of Colorado (Boulder County); and TI Residential, L.L.C., and Sue Schmidt, OWNER, property Owners (referred to in the singular as the “Owner”) (collectively the “Parties”).

WITNESSETH:

WHEREAS, §29-20-101 et seq., CRS as amended, enables the Parties to enter into Intergovernmental Agreements to plan for and regulate land uses, in order to minimize the negative impacts on the surrounding areas and protect the environment, and specifically authorizes local (i.e., City and County) governments to cooperate and contract with each other for the purpose of planning and regulating the development of land by means of a “comprehensive development plan”; and

WHEREAS, Owner has filed an application to annex the property described in Exhibit A (“Property”) to Erie, the Property is located in Erie’s Municipal Influence Area in the East Central Boulder County Comprehensive Development Plan IGA and is therefore permitted to be annexed by Erie, and Erie has identified no substantial barriers to such annexation thus far in the process; and

WHEREAS, Erie seeks the development of a public trail across the Property, as depicted on the aerial map attached hereto as Exhibit B, and Owner has offered to create such a trail, the trail providing a safe, off-road non-motorized pedestrian and bicycle route for many children going to school and for other members of the public; and

WHEREAS, based upon the terms and conditions set forth herein, Boulder County does not believe that it is necessary to require Owner nor Erie to seek any additional permits under the Boulder County Land Use Code for its public trail improvements to the Property; and

WHEREAS; the functions described in this Amendment Agreement are lawfully authorized to Erie and Boulder County, as provided in article 20 of title 29; part 1 of article 28 of title 30; part 1 of article 12 of title 31; and parts 2 and 3 of article 23 of title 31; CRS, as amended; and

WHEREAS, §29-1-201, et se., CRS, as amended, authorizes the Parties to cooperate and contract with one another with respect to functions lawfully authorized to each of the Parties and the people of the State of Colorado have encouraged such cooperation and contracting through the adoption of Colorado Constitution; Article XIV, §18(2); and

WHEREAS, the Parties have each held hearings after proper public notice for the consideration of entering into this Amendment Agreement and the amendment of the comprehensive development plan for the subject lands; and

WHEREAS, the Parties desire to enter into this Intergovernmental Agreement in order to plan for the use of the Property through joint adoption of a mutually binding and enforceable comprehensive development plan, and Owner consents to and agrees to be bound by the terms and conditions of this Intergovernmental Agreement.

NOW THEREFORE, in consideration of the above and the mutual covenants and commitments made herein, the Parties agree as follows:

1. SCHMIDT PROPERTY PUBLIC TRAIL CONSTRUCTION
COMPREHENSIVE DEVELOPMENT PLAN INTERGOVERNMENTAL
AGREEMENT:

This Agreement, hereinafter referred to as the “Schmidt Property Agreement”, including all exhibits attached hereto and incorporated herein by this reference, is adopted by Erie and Boulder County, and consented to by Owner, as the Schmidt Property Public Trail Construction Comprehensive Development Plan Intergovernmental Agreement.

2. EXPEDITED PUBLIC TRAIL CONSTRUCTION:

Erie desires construction of the trail as soon as possible, since the public school year of Erie Elementary School and Erie Middle School will commence shortly, and the trail is necessary for the safe passage of school students from properties surrounding the Property to these schools. However, the Property, until the annexation is approved and becomes effective, is still within the unincorporated area of Boulder County and within its regulatory jurisdiction.

In order to accomplish construction of the trail under Boulder County’s regulations, Owner would be required to apply for, process, and obtain approval from the Board of County Commissioners of a “limited impact special use” (“LISU”) for grading and filling purposes. Processing an LISU could take up to 3 months, and given the Erie’s pending annexation of the Property and the exigency of the school access issue, the Parties seek to avoid the time the LISU process would require.

3. TERMS AND CONDITIONS:

In order to accomplish the desires of the Parties, they agree as follows:

Owner and its successors and assigns in the Property may construct a public trail across the Property in the approximate location shown on Exhibit B.

Owner shall continue to expeditiously seek annexation to Erie.

Erie will expeditiously consider and act upon the annexation petition of Owner.

Boulder County, so long as the other terms and conditions of this Schmidt Property Agreement are met, shall waive the requirement for an approved LISU for the grading and filling necessary for the public trail construction.

Should the terms and conditions set forth above in 3b., or 3c., not be met, Owner agrees that it shall apply for, process, and seek approval of an LISU for the grading and filling that has been undertaken to that date and for any additional grading and filling that is intended by Owner. Such application shall be filed, along with all documents and fees required under the provisions of the Boulder County Land Use Code in effect on that date no later than 15 days after receipt of written notice from Boulder County that Boulder County has determined that either condition 3b. or 3c. have not been met and are unlikely to be met expeditiously.

4. REMEDIES AND ENFORCEMENT.

Any of the Parties may enforce this Amendment Agreement by any legal or equitable means including specific performance, declaratory and injunctive relief. No other person or entity shall have any right to enforce the provisions of this Amendment Agreement. If Owner does not meet either of its alternate obligations set forth in paragraph 3 above, Boulder County shall be entitled to seek all available remedies at law, including but not limited to requiring Owner to apply for, process, and seek approval of an LISU for the grading and filling that has been undertaken to that date and for any additional grading and filling that is intended by Owner, along with submission of all documents, fees and penalties required under the provisions of the Boulder County Land Use Code.

5. AMENDMENTS.

This Agreement contains the entire agreement between the Parties concerning the Property and the public trail construction. Any proposed amendment to this Schmidt Property Agreement shall take place only upon approval by resolution or ordinance adopted by the governing body of Erie and Boulder County, after notice and hearing as may be required by law, and signature of Owner.

6. BENEFICIARIES.

The Parties, Erie and Boulder County in their corporate and representative governmental capacities, and Owner as owner of the Property, are the only entities intended to be the beneficiaries of this Comprehensive Development Plan, and no other person or entity is so intended.

7. GOVERNING LAW AND VENUE.

The laws of the State of Colorado govern this Schmidt Property Agreement and venue for any action arising hereunder shall lie in the County of Boulder.

8. TERM AND EFFECTIVE DATE.

This Agreement shall become effective when signed by authorized representatives of each of the Parties. It shall remain effective for a period of Eighteen (18) months from its effective date.

9. PARTY REPRESENTATIVES.

Referrals made under the terms of this Amendment Agreement shall be sent to the Parties' and parties' representatives as follows:

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| ENTITY: | REPRESENTATIVE: |
| County of Boulder P.O. Box 471 Boulder, CO 80306 | Director, Land Use Department |

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|--|--------------------|
| Town of Erie P.O. Box 750 Erie, CO 80516 | Town Administrator |
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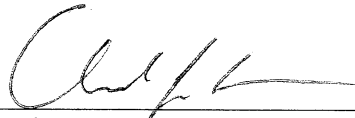
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| Owner TI Residential, L.L.C. 4 Inverness Court East, Suite #300 Englewood, CO 80112 | Darwin Horan |
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|----------------------------------|-------------|
| 12587 Jay Road Erie, CO 80516 | Sue Schmidt |
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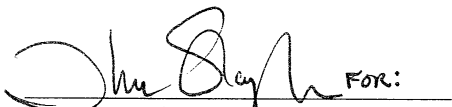
Name and address changes for representatives shall be made in writing, mailed to the other representatives at the then current address.

THIS AGREEMENT is made and entered into to be effective on the date as set forth above.

TOWN OF ERIE

By: 
Andrew Moore, Mayor

ATTEST:

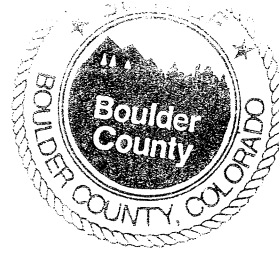
 FOR:
Nancy Parker, Town Clerk
THORESA STANTON, DEPUTY

COUNTY OF BOULDER

BY: BOARD OF COUNTY COMMISSIONERS

Ben Pearlman

Ben Pearlman, Chair



ATTEST:

APPROVED AS TO FORM:

Jana Petersen
Jana Petersen, Clerk to the Board

H. Lawrence Hoyt
H. Lawrence Hoyt, County Attorney

I hereby consent to and agree to be bound by the terms and conditions set forth in this Intergovernmental Agreement.

PROPERTY OWNERS:

TI Residential, L.L.C. ,

By: *Darwin Horan*
Darwin Horan, Manager

STATE OF COLORADO)

) ss.

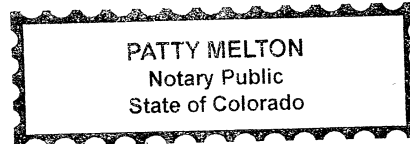
COUNTY OF ~~BOULDER~~)

ARAPAHOE

The foregoing instrument was acknowledged before me this 23rd day of September, 2008, by Darwin Horan, Manager, TI Residential, L.L.C.

WITNESS my hand and official seal.

(SEAL)



Notary Public: *Patty Melton*

My Commission Expires: April 9, 2010

Sue Schmidt

By: *Sue Schmidt*
Sue Schmidt, Individually,

STATE OF COLORADO)
) ss.
COUNTY OF ~~BOULDER~~)
) AZAPATOC

The foregoing instrument was acknowledged before me this 8 th day of OCTOBER 2008, by Sue Schmidt, Individually.

WITNESS my hand and official seal.

(SEAL)



Notary Public: *Patty Melton*

My Commission Expires: My Commission Expires
 April 9, 2010

EXHIBIT "A"
LEGAL DESCRIPTION

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 13;

THENCE NORTH 89°18'28" WEST ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 13 A DISTANCE OF 925.55 FEET;

THENCE NORTH 00°41'32" EAST, A DISTANCE OF 144.50 FEET TO A POINT ON THE APPARENT SOUTHERLY RIGHT-OF-WAY LINE OF JAY ROAD SAID POINT ALSO BEING THE **POINT OF BEGINNING**;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING (2) TWO COURSES;

1. NORTH 86°53'01" WEST, A DISTANCE OF 494.38 FEET;
2. NORTH 84°46'00" WEST, A DISTANCE OF 930.79 FEET TO A POINT ON THE EASTERLY LINE OF A BOULDER COUNTY ROAD RIGHT-OF-WAY RECORDED AT BOOK 1062, AT PAGE 176;

THENCE ALONG SAID EASTERLY AND SOUTHERLY LINE OF SAID BOULDER COUNTY ROAD RIGHT-OF-WAY THE FOLLOWING (2) TWO COURSES;

1. SOUTH 05°27'43" WEST, A DISTANCE OF 4.00 FEET;
2. NORTH 84°32'17" WEST, A DISTANCE OF 319.06 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 13;

THENCE NORTH 00°07'34" EAST ALONG SAID WEST LINE A DISTANCE OF 2,438.78 FEET TO THE NORTHWEST CORNER OF SAID SECTION 13;

THENCE SOUTH 89°08'12" EAST ALONG THE NORTH LINE OF SAID SECTION 13 A DISTANCE OF 1,789.05 FEET TO A POINT ON THE CENTERLINE OF AN IRRIGATION DITCH:

THENCE ALONG SAID CENTERLINE THE FOLLOWING (5) FIVE COURSES;

1. SOUTH 05°18'53" WEST, A DISTANCE OF 85.95 FEET;
2. SOUTH 09°21'45" WEST, A DISTANCE OF 18.85 FEET TO A POINT ON CURVE;
3. ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 171.00 FEET AND A CENTRAL ANGLE OF 71°01'12", AN ARC DISTANCE OF 211.96 FEET; (CHORD BEARS SOUTH 44°52'21" WEST, A DISTANCE OF 198.65') TO A POINT OF ANGLE;
4. SOUTH 80°22'57" WEST, A DISTANCE OF 39.94 FEET;
5. SOUTH 84°33'07" WEST, A DISTANCE OF 110.15 FEET TO A POINT ON THE NORTH LINE OF AN EASEMENT FOR THE LOWER BOULDER IRRIGATION CANAL, AS RECORDED AT BOOK 986, PAGES 266 AND 269, BOULDER COUNTY CLERK AND RECORDER'S OFFICE;

THENCE ALONG THE NORTH LINE OF SAID EASEMENT THE FOLLOWING TWO COURSES:

1. NORTH 76°17'21" WEST, A DISTANCE OF 116.57 FEET;
2. SOUTH 67°06'39" WEST, A DISTANCE OF 46.92 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 13;

THENCE SOUTH 00°09'11" WEST ALONG SAID WEST LINE, A DISTANCE OF 846.84 FEET;

THENCE NORTH 89°29'13" EAST, A DISTANCE OF 104.55 FEET;

THENCE SOUTH 00°09'16" WEST, A DISTANCE OF 17.93 FEET TO A POINT ON THE CENTERLINE OF AN IRRIGATION DITCH;

THENCE ALONG SAID DITCH CENTERLINE THE FOLLOWING NINE COURSES:

1. SOUTH 87°53'01" EAST, A DISTANCE OF 96.53 FEET;
2. SOUTH 54°47'37" EAST, A DISTANCE OF 37.79 FEET;
3. SOUTH 35°58'27" EAST, A DISTANCE OF 46.95 FEET;
4. SOUTH 30°22'26" EAST, A DISTANCE OF 187.12 FEET;
5. SOUTH 27°11'53" EAST, A DISTANCE OF 237.04 FEET;
6. SOUTH 20°56'33" EAST, A DISTANCE OF 133.69 FEET;
7. SOUTH 08°05'21" EAST, A DISTANCE OF 67.96 FEET;
8. SOUTH 01°39'24" EAST, A DISTANCE OF 209.10 FEET;
9. SOUTH 00°14'08" WEST, A DISTANCE OF 273.40 FEET TO A POINT ON THE NORTHERLY LINE OF A PARCEL OF LAND RECORDED AT RECEPTION NUMBER 2484649.

THENCE ALONG SAID NORTHERLY AND WESTERLY LINES OF SAID PARCEL OF LAND THE FOLLOWING TWO (2) COURSES:

1. NORTH 89°36'22" WEST, A DISTANCE OF 0.66 FEET;
2. SOUTH 00°14'06" WEST, A DISTANCE OF 75.50 FEET TO A POINT ON THE NORTHERLY LINE OF A PARCEL OF LAND RECORDED BY RECEPTION NUMBER 1811922;

THENCE ALONG SAID NORTHERLY AND WESTERLY LINE OF SAID PARCEL OF LAND THE FOLLOWING TWO (2) COURSES:

1. NORTH 73°58'04" WEST, A DISTANCE OF 114.01 FEET;
2. SOUTH 02°13'11" WEST, A DISTANCE OF 279.48 FEET TO A POINT EXTENDED SOUTHERLY TO SAID APPARENT SOUTHERLY RIGHT-OF-WAY LINE OF JAY ROAD, SAID POINT ALSO BEING THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBED PARCEL CONTAINS AN AREA OF 3,921,788 SQ. FT. OR 90.032 ACRES MORE OR LESS.

