

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:

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

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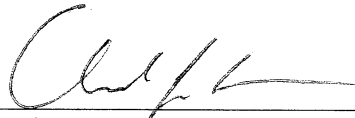
Owner TI Residential, L.L.C. 4 Inverness Court East, Suite #300 Englewood, CO 80112	Darwin Horan
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12587 Jay Road Erie, CO 80516	Sue Schmidt
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Name and address changes for representatives shall be made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

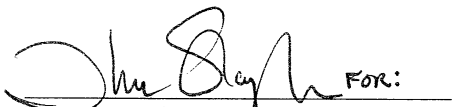
THIS AGREEMENT is made and entered into to be effective on the date as set forth above.

TOWN OF ERIE

By: 

Andrew Moore, Mayor

ATTEST:

 FOR:

Nancy Parker, Town Clerk
THORSA STANTON, DEPUTY

COUNTY OF BOULDER

