

Ordinance No. \_\_\_\_\_

**AN ORDINANCE AMENDING THE  
SUBDIVISION AND DEVELOPMENT  
CONTROL ORDINANCE OF THE  
CITY OF O’FALLON, ST. CLAIR  
COUNTY, ILLINOIS TO ESTABLISH  
AN EDUCATIONAL FACILITIES  
DEDICATION AND FEE-IN-LIEU  
REQUIREMENT**

**WHEREAS**, the City is empowered by its Home Rule authority, in addition to such authority granted by the State Legislature, which has expressly authorized municipalities pursuant to 65 ILCS 5/11-12-5 and 65 ILCS 5/11-12-5.1, to enact Plans and ordinances regarding Subdivider donations and impact fees for school grounds and school facilities serving subdivision developments seeking platting approval and for School Districts to request such dedication or provisions for school facilities; and

**WHEREAS**, such authority extends, by virtue of 65 ILCS 5/11-12-12, Home Rule authority, and other applicable law, to all areas within the City and within 1½ miles beyond the corporate limits of the City; and

**WHEREAS**, the O’Fallon Township High School District 203 and the K-8 Elementary School Districts (District 85, 90 and 104), having jurisdictional boundaries wholly or partly within the City, have completed a School Needs Assessment For Land and Facility Acquisition, as well as a Geodemographic Study reflecting the nature of services and increased need that will occur from continuing development within the City, and have submitted these materials to the City in conjunction with separate resolutions formally requesting the adoption of an Educational Facilities Impact Fee Ordinance to partly address the impact of new development on the School Facilities needs for each District; and

**WHEREAS**, after public hearings and input from citizens, the school districts, the development community, and others, the City has prepared an ordinance seeking to fairly address the needs identified in the materials presented by the School Districts in a manner that meets or exceeds the standard that such impact fee or dedication requirement be no more than that which is specifically and uniquely attributable to the impact of the development, and the City Council hereby legislatively determines that the calculations and formulae herein fairly address the impact of new development on school grounds and facilities needs and does so in a manner that is lawful and that imposes on the Subdivider an obligation that is no more than the impact that is specifically and uniquely attributable to that development;

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF O’FALLON, ST.CLAIR COUNTY, ILLINOIS, AS FOLLOWS:**

**Section 1.** **Title.** This Ordinance shall be known as and may be cited as the Educational Facilities Dedication and Fee-in-Lieu Ordinance (“Ordinance”) and is hereby adopted as a new Section amending and supplementing the City Subdivision and Development Control Ordinance of the City (“this Article”).

**Section 2.** **School Facilities Dedication Requirement.** As a condition of final plat approval of any subdivision, as defined in this Article, authorizing new residential lots or units within the corporate limits of the City, or within the planning jurisdiction of the City (being one and one-half (1½) miles outside the corporate limits), each Subdivider shall dedicate real property on-site to the O’Fallon Township High School District and the K-8 Elementary School District serving the subject subdivision (individually a “District” and together the “Applicable Districts”), or equivalent real property off-site acceptable to the City and the Applicable Districts, or make a cash payment in lieu of the land dedication to the Applicable School Districts, or a combination of both, as determined by the Applicable Districts and approved by the City, for school facilities to serve the immediate and future needs of the residents of the subdivision and development. Such dedication or payment shall be in a total amount sufficient to satisfy the criteria and formula contained within this Ordinance; provided that the City shall continue to have the final decision-making authority as to the satisfaction of the requirements under this Ordinance and nothing herein shall be deemed to create any cause of action, remedy or action in law or in equity to any Subdivider, District, or any other person or entity other than the City, which shall have the full rights, remedies and power of enforcement of this Ordinance as may be available to it consistent with applicable law. Nothing herein shall preclude the City from modifying this standard or excepting any subdivision from this standard as a part of any subdivision plat approval where otherwise required or not contrary to applicable law. Any subdivision that has preliminary plat approval from the City as of the effective date of this Ordinance and subsequently results in final plat approval in substantially the same form within twelve (12) months of such preliminary plat approval, unless otherwise provided by the City Council, shall not be subject to the requirements of this Ordinance; provided that any subsequent subdivision or revisions to the plat shall be subject to the requirements of this Ordinance unless otherwise expressly exempted by the Council as may be provided consistent with applicable law.

**Section 3.** **Criteria for Calculating School Land Dedications Amount.**

1. **Dedication Requirement and Formula:** A land dedication or equivalent fee-in-lieu shall be made to each Applicable District serving the subdivision by the Subdivider in the amount necessary to address the impact on each School Type (*i.e.*, high school, middle school, and elementary school) provided by that District. The dedication required to each Applicable District for each School Type shall be as determined by the following formula:

$$\text{Land Required to be Dedicated} = \text{Acres per Student} * \text{Students per Dwelling Unit} * \text{Number of each Dwelling Units}$$

The specific values for each of these factors that are to be multiplied to determine the land dedication requirement have been established in the Land Dedication Calculation Chart below based on the data and studies provided by the Districts and as further collected by the City based on applicable building permit information, which studies are compiled as part of the **City of O’Fallon School Land Dedication and Fee-in-Lieu Study** on file with the City Clerk and deemed incorporated herein and accepted as Legislative Findings supporting this Ordinance. For purposes of this formula, the Number of Dwelling Units shall be calculated based on the maximum density permitted under the zoning classification for the subdivision as platted. Where a re-subdivision occurs after satisfaction of this obligation, an additional dedication requirement shall apply based on the maximum additional density or lots authorized by the re-subdivision plat. The applicable ratios derived from such Study are compiled in the following Land Dedication Calculation Chart below, which shall be used in applying this formula to each subdivision to determine the land dedication required for such subdivision:

LAND DEDICATION CALCULATION CHART					
District	School Type	Acres per Student	Students Per Dwelling Unit Type		
			Single-Family Detached	Single-Family Attached	Multi-Family
District 85 (Shiloh K-8)	Elementary	.008	.559	.114	.059
	Middle	.067	.199	.033	.031
District 90 (O’Fallon K-8)	Elementary	.028	.559	.114	.059
	Middle	.021	.199	.033	.031
District 104 (Central K-8)	Elementary	.010	.559	.114	.059
	Middle	.067	.199	.033	.031
District 203 (OTHS 9-12)	Senior High	0.024	.196	.049	.031

2. Methodology Used for Determining Each Factor: The standards set forth above have been derived from the **City of O’Fallon School Land Dedication and Fee-in-Lieu Study** and are based upon what is specifically necessary to provide service levels equivalent to that established by each District for its existing students, including existing and partially implemented planned service level improvements, the reasonableness of which was further verified and qualified by available data and studies and literature to be appropriate service levels and housing impacts, including, but not limited to, information provided by the Districts and the State Superintendent of Education and the unique characteristics of the City and surrounding community, and the desire of the residents to maintain the existing character and open space in future school sites. The Students per Dwelling Unit Type is generally indicative of actual current and short-range projected trends in family size for new construction in the City. Review of traditional use of bedrooms as a surrogate for estimation of student impact revealed certain inequities and inaccuracies as applied in this area and therefore the City has combined such data with an additional review of building permit data specific in the City for each Dwelling Unit Type, to better refine the estimation formula to result in a more accurate and consistent determination of impact from each subdivision in the City. Unless hereinafter changed

by the City based on new service level standards by the applicable District, or altered as part of the appeal process provided for herein, standards and ratios established in the Land Dedication Calculation Chart above shall be presumed as the appropriate standards and shall be used in calculating any dedication or Fee-in-Lieu of land dedication herein, unless timely objected to as provided herein.

3. Modification of Standards: The Students per Acre ratio in the Land Dedication Calculation Chart is based on information provided by each District and shall be adopted by each such District as its level of service (“LOS”) policy in conformance with this Ordinance as a condition of use of any dedication or Fee-in-Lieu provided for herein. In the event that any District determines that different impact ratios exist than appear in the Land Dedication Calculation Chart, including, but not limited to, due to a modification of the LOS standards by certification and formal implementation of a different standard that may lawfully be used in establishing the specific and unique impact of each new development, the District shall certify such modified LOS or revised ratio to the City, with supporting material, and the City may then, at its discretion, modify the standard established herein accordingly. Except as may be provided for as result of an appeal to these standards as provided in this Ordinance, the standards in this Ordinance shall continue to apply until or unless the City expressly modifies the standards established herein and provides notice to the District of such change.

#### **Section 4. Contribution in Lieu of School Sites.**

1. General Requirements for Acceptance of Fee-in-Lieu: When the development is small and the resulting site is too small to be practical or when the available land is inappropriate for a school site, or is in conflict with the approved standards or plan of the Applicable District, the City, with the written acceptance of the Applicable Districts, may require the Subdivider to pay a cash contribution (“Fee-in-Lieu”) to each of the Applicable Districts in lieu of the land dedication required, or as part of a combination of land and fee necessary to satisfy the land dedication requirements herein. The Fee-in-Lieu of school sites shall be paid to each of the Applicable Districts and held, with any and all interest earned thereon, by each Applicable District in trust to be maintained and used in accordance with this Ordinance for the acquisition of land for a school site to serve the immediate or future needs of children from that subdivision, or for the construction of school buildings or additions thereto in accordance with 65 ILCS 5/11-12-5(7) or for any other purpose defined by any written agreement between the Subdivider and the City incorporated in this plat requirement. If any portion of a Fee-in-Lieu of dedication of school sites is not expended for the purposes set forth herein within thirteen (13) years from the date of receipt, it shall be refunded by the District holding the contribution to the record owner of the subdivided land at the time of the refund upon application of such owner. If there is more than one record owner of the subdivided land or of the land that comprises the planned unit development, as applicable, such record owners shall share in the refund pro-rata based on the cash contributions originally paid by each property.

2. Calculation of Fee-in-Lieu: A Fee-in-Lieu shall be in the amount of the Fair Market Value of the portion of the Land Required to be Dedicated, as set forth in Section 3 above, for which the Fee replaces such dedication. The Fair Market Value shall be determined and be the same as the Fair Market Value for Park Lands established in Section 5.5 of the Subdivision and Development Control Ordinance of the City (“Section 5.5”), as may be amended from time to time. Unless otherwise specified by the City Council, any adjustment to such determined Fair Market Value set forth in that Section 5.5 shall be deemed an adjustment of Fair Market Value of Lands pursuant to this Ordinance.

**Section 5. Determination of Manner of Satisfaction of Requirements.** The determination of the manner in which this Ordinance will be satisfied by dedication of land, payment of Fee-in-Lieu, or combination thereof shall be reflected on the preliminary plat and finally approved as part of the final plat approval.

1. Preliminary Plat Application: The Subdivider shall submit with the preliminary plat evidence that the Applicable Districts have been provided a copy of the proposed application requesting to such Districts to approve the acceptance of land or the payment of Fee-in-Lieu as may be proposed on the preliminary plat consistent with this Ordinance. If the City determines that the proposed dedication or Fee-in-Lieu complies with this Ordinance and written approval thereof by the Applicable Districts has been received by the City, the approved manner of satisfaction of this Ordinance shall be reflected as a condition of the preliminary plat and shown on the script for such plat. A preliminary plat may be denied if such notice to and approval from the Applicable Districts has not been received, provided that if the Applicable Districts have not provided comment or approval within thirty (30) days of such notice, or other reasonable time as may be determined by the City, the Director may proceed with seeking approval of the preliminary plat with or without the dedication or Fee-in-Lieu.

2. Final Plat Approval: Unless changes to the final plat result in changes to the required dedication or Fee-in-Lieu hereunder, the final plat shall also be approved subject to compliance with this requirement and contain a similar script reflecting the manner of satisfaction of this Ordinance as may be approved by the City. The Final plat shall include all such agreements and approvals as are provided for in this Ordinance and no building permits shall be issued in the Subdivision contrary to the requirements of the Plat or of this Ordinance. Where a Fee-in-Lieu is approved as part of the final plat, the final plat script language shall be substantially in conformance with the following: “The undersigned Subdivider acknowledges and covenants on behalf of the Subdivider and on behalf of the owner of any lot in this Plat, as a covenant running with the land, that (1) this Plat is subject to compliance with the City of O’Fallon Educational Facilities Dedication and Fee-in-Lieu Ordinance, (2) compliance shall be through payment of a Fee-in-Lieu as set forth in an Agreement Between Subdivider and City To Delay Payment of Cash Contributions (“Agreement”) approved by the City as part of this plat and on file with the City Clerk, and (3) no building permit shall be issued for any lot within this Plat until satisfaction of such Fee-in-Lieu obligation is made for such Lot pursuant to the Agreement.”

**Section 6. Time of Payment or Dedication.** All land dedications and Fees-in-Lieu imposed by this Ordinance shall be due and payable upon, and as a condition of, final plat approval of the subdivision and any improvements to dedicated land shall be included in improvement plats as are other required subdivision improvements. The City may agree that the payment of the cash contributions may be made at the time of building permit issuance, in consideration of which the Subdivider shall execute an Agreement, substantially in the form of Exhibit A to this Ordinance, which shall be approved by the City as part of the final plat approval, recorded with the Plat, and reflected on the plat script language as an obligation of each lot within the subdivision that shall be satisfied as a condition of building permit approval. In the event the City agrees to delay the payment of fees and cash contributions required herein to the time of building permit issuance, the fees and cash contributions owed shall be those that are in effect at the time the building permit is issued.

**Section 7. Reservation of Additional Land.** When the Comprehensive Plan or the standards of the City call for a larger amount of school sites in a particular subdivision or planned unit development than the Subdivider is required to dedicate pursuant to this Ordinance, the land needed beyond the Subdivider's dedication requirement shall be set aside and reserved by the Subdivider for subsequent purchase (at a price determined at the time of reservation) by the City or other public body designated by the City, provided that if such acquisition is not made within such time frame as may be mandated by applicable law, but in no event more than five (5) years after the date of approval of the final plat, then such reservation shall be deemed automatically terminated.

**Section 8. Requirements for Land to be Dedicated.** All land dedicated pursuant to this Ordinance for school purposes shall be subject to and satisfy the following requirements:

1. **Location:** Each District shall adopt and provide to the City plans and criteria to be used as a guideline in locating sites. School sites shall be located in the City in accordance with such plans heretofore or hereafter adopted to ensure compliance with the purposes of this Ordinance. Where appropriate, a school site that is to be dedicated should, if possible, be combined with dedications from adjoining developments in order to produce usable school sites without undue hardship on a particular Subdivider.

2. **Grading, Suitability and Improvement of Dedicated Land:** All land dedicated pursuant to this Ordinance for school purposes shall be graded, suitable for intended school purposes, and otherwise improved in the same manner and subject to the same requirements as set forth for Park Land dedications in Section 5.3 of the City Subdivision and Development Control Ordinance, except that the following additional requirements shall apply:

a. the site shall have direct access to a fully-improved street across at least twenty percent (20%) of the distance of its perimeter;

b. school sites should ideally be accessible by a bicycle/pedestrian trail, and any such access route onto the property shall be at least thirty (30) feet

wide. Such access routes should normally be dedications and not easements, depending on which entity of government is to be responsible for said routes;

c. any vehicular access route leading to or on the site shall be of sufficient size and good geometry to properly accommodate vehicles that will access and traverse the site, including, but not limited to, good principles of traffic circulation, accommodation of one-way and/or two-way drives for school buses, separation of bus traffic from passenger automobile traffic, bus drop-off areas separate from publicly-dedicated streets, guest and employee parking areas, and the like. Such off-street access routes, drives, drop-offs, and parking areas will not be dedicated rights-of-way and shall be the responsibility of the owner of the site to maintain.

3. Environmental Risk Audit: Prior to the conveyance of any land to the Applicable District, the intended grantee shall be furnished with an environmental risk audit prepared by an environmental professional meeting the minimum requirements of 415 ILCS 5/22.2(j)(6)(E)(iii), certified to and acceptable to the grantee (the “Environmental Professional”), assuring the grantee that there are no hazardous substance(s) (as defined hereinafter) on, under, to, or from the land. Said environmental audit shall be what is commonly referred to as a “Phase I Environmental Audit,” which shall meet the minimum requirements for a pre-acquisition audit as set for in 415 ILCS 5/22.2(j)(6)(E)(v). In the event the Phase I Environmental Audit does not conclude there is no presence or likely presence of a release of substantial threat of a release of hazardous substance(s) or pesticide on, under, to, or from the land, the grantee shall furnish a “Phase II Environmental Audit” as set forth in 415 ILCS 5/22.2(j)(6)(E)(vi), including a soil toxicity analysis and recommendations from the Environmental Professional, which concludes that there is no presence or likely presence of a release or substantial threat of a release of hazardous substance(s) on, under, to, or from the land, and certifying that, in the judgment of said environmental professional, there is no reasonable probability that the land contains any hazardous substance(s) in violation of any federal or state environmental standards. In the event said Phase II Environmental Audit and/or soil toxicity analysis discloses the presence or likely presence of a release or a substantial threat of a release of any hazardous substance(s) at, on, under, to, or from the land to the conveyed, the grantor shall first cause all such hazardous substance(s) to be removed at its sole cost and expense in accordance with all federal, state and local environmental laws, rules and regulations and furnish the intended grantee with a “No Further Remediation Letter” from the governmental agencies having jurisdiction over the clean up prior to conveyance of any of the land to the intended grantee. The City and the District may reject acceptance of any land for dedication if the Environmental status of the property creates any environmental or monetary risk not reasonably acceptable to the District or the City. Prior to the conveyance of the land, the Subdivider and the owner of the land to be conveyed shall execute and deliver to the intended grantee an Environmental Indemnification Agreement, which form has been approved by the City Attorney, agreeing to defend, indemnify, and hold the City, its corporate authorities, officers, officials, employees, agents, successors and assigns, and the District and its respective officers, officials, employees, agents, successors and assigns, harmless from

and against any and all liability, claims, damages, causes of action, and expenses arising out of the presence of any hazardous substance(s) in, under, or upon said land to be conveyed prior to the date of conveyance.

4. Title Insurance, Survey, Plats, and Taxes: Each deed or other instrument conveying land to the Applicable District shall be to a duly platted lot and shall be accompanied by:

a. a written commitment issued by a title insurer licensed to do business in Illinois to insure the grantee's title to such real estate in an amount equal to the equivalent Fee-in-Lieu value as provided herein, with extended coverage over the general exceptions to title and subject only to (1) real estate taxes not yet due and payable, (2) covenants, conditions and restrictions that do not prohibit the use of the subject property for school purposes, and (3) other generally marketable exceptions as may be approved by the District; and

b. a current ALTA boundary line survey, certified to the grantee by a licensed Illinois Land Surveyor to be in compliance with the American Land Survey Standards, showing no encroachments; and

c. monuments must be established and the land staked immediately prior to dedication of the property. The Subdivider shall pay for the cost of the owner's title insurance in said amount, the ALTA survey, and the platting costs, if not already platted.

d. Real Estate Tax Escrow. The Subdivider shall pay the prorated general real estate taxes on the land not yet due and payable as of the date of transfer, and shall deposit a sum of money in escrow with the intended grantee's attorney or a title company licensed to do business in the State of Illinois.

**Section 9.** **Appeals.** Any person, firm, or corporation aggrieved by any actual or threatened application of this Ordinance, or by the standards established herein, including, but not limited to, those established in the Land Dedication Calculation Chart, and Fair Market Value as it may apply generally or to a particular subdivision or planned unit development, shall file an appeal before the City Hearing Officer pursuant to Section 15.030 of the City Zoning Code and procedures therein. Such written appeal shall be made, if at all, within twenty-one (21) days after the City's approval or other action on the preliminary plat relating to such standard or application of the Ordinance. Unless a right of appeal is waived by the Subdivider, pending such opportunity for appeal and during pendency of any filed appeal, no final plat shall be approved on such affected subdivision of the applicant until the appeal resolves the appeal including, but not limited to, the precise manner of compliance with this Ordinance. A failure to file an appeal pursuant to this Section within the time provided herein shall constitute a waiver of any objection or claim for relief as to the provisions or such application of this Ordinance and shall, to the extent permitted by law, preclude the filing of any legal action of any kind arising from any claims subject to this appeal requirement. In the event an applicant files a written appeal as provided herein, such applicant shall submit his own demographic study showing the estimated

additional population to be generated from the subdivision and study providing alternative factual evidence supporting the basis for such appeal directly addressing the challenged aspect of this Ordinance, application or specific provision or application of the **City of O'Fallon School Land Dedication and Fee-in-Lieu Study** as to the specific subdivision at issue, if applicable, and such other information as may be required pursuant to Article 15 of the City's Zoning Code. The Applicable Districts shall be deemed an interested party to such appeals and the applicant shall provide proof of notification to the Applicable Districts of the filing of the Appeal at the time of and as part of the filing of the appeal.

**Section 10. Condition to Annexation.** Unless otherwise provided by the City in an Annexation Agreement, the dedications of land or Fee-in-Lieu thereof required by this Ordinance shall also be part of and deemed a condition to the annexation of any land to the City.

**Section 11. Indemnification.** As a condition to the City implementing and enforcing this Ordinance and the Applicable Districts receiving any school land dedications and/or Fee-in-Lieu thereof, the Applicable District shall execute an indemnification agreement substantially in form of that set forth in Exhibit B of this Ordinance or as otherwise approved by the City Council.

**Section 12. Collection of Fees.** The Fee-in-Lieu of land dedications imposed by this Ordinance shall be collected and held by the Applicable District in accordance with the standards and requirements of this Ordinance and shall be used for the purposes set forth in this Ordinance. The District shall promptly provide written confirmation of payment to the Subdivider that the Subdivider can present to the appropriate City authorities as proof of compliance with the terms of this Ordinance prior to the issuance of record plat, or if a Fee-in-Lieu at the time of each building permit is approved as provided herein, then prior to issuance of any building permit in a subdivision for which the dedication or fee requirements of this Ordinance have not been satisfied.

**Section 13. Needs Assessment; Land and Capital Facilities Acquisition Plan.** As a condition to the imposition of these land dedications and/or Fee-in-Lieu of land dedications, each District shall conduct and maintain for public inspection a needs assessment and adopt a plan for acquisition of land and capital facilities needed to accommodate growth.

1. A needs assessment shall contain the following information for each school district:
  - a. A description of the nature and location of existing school sites and existing schools within each district.
  - b. An identification of the capacity of each school building within the particular district and of the number of students then enrolled in each school building.
  - c. A projection of the character and location of new development that is expected to occur within each district during the succeeding 10-year period. The District may obtain the information necessary to make this projection from

sources such as, but not limited to: municipalities, other units of government, agencies, and consultants.

d. An identification of the amount of school lands that will be necessary within each district in order to accommodate the demands of such projected new development, and an estimate of the public grounds acquisition costs that will be incurred or have been incurred by each district in acquiring such lands.

e. A general description of each classification of school capital facilities (including construction, expansion, or enhancement of any public facilities and the land improvement, design, engineering, and professional costs related thereto) that will be necessary within each district in order to provide school capacity for the projected new development, and an estimate of the capital facilities costs that will be incurred by each district in constructing such capital facilities.

2. Based upon the needs assessment, each District shall provide the City an acquisition plan for school sites and capital facilities. This acquisition plan shall:

a. project for a planning period of at least five (5) years the need for school sites within the district;

b. set forth a schedule for the acquisition of such lands and facilities to meet the projected need (which schedule may be conditioned upon the availability of financing);

c. indicate the size and general location of the needed lands and facilities;

d. identify the estimated or incurred costs of acquiring such needed lands and facilities;

e. set forth the anticipated funding sources for the acquisition of such needed lands and facilities;

f. determine the feasibility of acquiring the needed land and facilities based upon the District's current financial condition;

g. determine the feasibility of acquiring the needed land and facilities based upon the District's estimate of the revenues (including, without limitation, cash in lieu of land dedication required by this Educational Facilities Impact Fee Ordinance) pursuant to the plan;

h. estimate the impact on property taxes in the City assuming the plan is implemented; and

i. include a resolution from the District that such District advocates and supports the provisions of this Ordinance and that the Ordinance requirements as to dedications of land or cash contributions in lieu thereof are an integral part of the efforts of the District to address the impact of growth within its jurisdiction.

3. If the City deems it necessary, it may require an updated needs assessment and plan for acquisition of land and capital facilities from the District annually. The failure to require said assessment update shall not invalidate the requirements of this Ordinance.

**Section 14.** **Effective Date.** This Ordinance shall be in full force and effect from and after its passage, approval, and publication, as required by law; provided that it shall not be effective until the City Administrator has filed with the City Council and the City Clerk written certification that the following documents have been received by the City: (1) Ordinance adopted by the Village of Shiloh, Illinois adopting a school lands dedication ordinance substantially the same as this Ordinance or having a mandatory dedication amount of not less than that set forth in this Ordinance, and (2) Resolutions approved by each District approving a School Lands Dedication and Fee-in-Lieu policy consistent with this Ordinance and including a specific commitment by the District to accept and use lands and fees received pursuant to this Ordinance only in accordance with the requirements of this Ordinance, and (3) the needs assessment and documentation from each District as required by Section 13 of this Ordinance, and (4) a fully executed Indemnification Agreement substantially in the form of Exhibit B hereto.

Passed by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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ATTEST:  
(seal)

Approved by the Mayor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Philip A. Goodwin, City Clerk

\_\_\_\_\_  
Gary L. Graham, Mayor

ROLL CALL:	Grogan	Schmidt	True	Henry	Reckamp	Medford	Bequette	<b>SUB TOTALS</b>
Aye								
Nay								
Absent								

ROLL CALL:	Mouser	Renner	Bennett	Boone	Drolet	Albrecht	West	<b>SUB TOTALS</b>	<b>SUM OF TOTALS</b>
Aye									
Nay									
Absent									

**EXHIBIT LIST**

**EXHIBIT A:**      **Agreement Between Subdivider and City to Delay Payment of Cash Contributions**

**EXHIBIT B:**      **Agreement Regarding the Receipt of Subdivider Subdivision Contributions and Indemnification Agreement**

**Exhibit A**

**AGREEMENT BETWEEN SUBDIVIDER AND CITY  
TO DELAY PAYMENT OF CASH CONTRIBUTIONS**

This Agreement (this "Agreement") is entered into between the City of O'Fallon, Illinois (the "CITY") and \_\_\_\_\_ ("Subdivider").

WHEREAS, the CITY has approved a final plat of subdivision or a final plat of a planned development at the request of Subdivider for the real estate legally described in Exhibit A attached hereto and made a part hereof (the "Land"); and

WHEREAS, pursuant to the City Educational Facilities Dedication and Fee-in-Lieu Ordinance ("Ordinance"), certain cash contributions for school lands are now immediately due to be paid to the [insert Applicable Districts from Subdivider; and

WHEREAS, Subdivider has, however, requested that payment of the aforesaid cash contributions be delayed and that the same become due and payable on a per dwelling unit basis at the time the CITY issues a building permit for each particular dwelling unit;

NOW, THEREFORE, in consideration for the CITY's agreeing to delay the collection of the cash contributions, Subdivider hereby agrees as follows:

1. The amount of cash contributions owed by Subdivider shall be calculated based upon \_\_\_\_\_ number of \_\_\_\_\_ {insert type of unit} pursuant to the rate established by the Ordinance, currently at \$\_\_\_\_\_/unit, or as provided for in such other future ordinance amending or replacing the Ordinance, which is in effect at the time of the issuance of a building permit.

2. Notwithstanding any present or future law, regulation and/or legal precedent to the contrary, the unit of local government that is the ultimate recipient of the subject cash contributions may expend such contributions for any of the following purposes intended to serve immediate or future needs of the residents and children of the Subdivider's subdivision or planned development: (a) for the acquisition of land; (b) for site improvements such as, by way of example, streets, curbs, gutters, storm water control, and utility extensions; (c) for construction of capital facilities, including, by way of example, new buildings and structures, and the expansion or enhancement of existing buildings and structures; and (d) for so-called soft costs directly related to the foregoing items (b) or (c), such as architectural and engineering costs.

3. Subdivider has reviewed the Ordinance regarding the dedication of school sites or cash contributions in lieu thereof, as well as all of the methodology, formulae, calculations, projections, assumptions, numbers, and other factors used to arrive at the land dedication requirements or cash contributions in lieu thereof that are the subject of this Agreement (hereinafter referred to as the "Ordinance and Attendant Calculations") and hereby acknowledges and agrees that:

(a) pursuant to the terms of the Ordinance, Subdivider has been offered the opportunity to raise in a hearing before the CITY any objections relating to the standards contained in the Ordinance, the presumptions as to fair market value, or any other application of the Ordinance, and Subdivider has not raised such objections, and Subdivider has thereby waived the right to assert those objections; and

(b) Subdivider hereby waives any future right to object to or to institute any legal action regarding the Ordinance and Attendant Calculations; and

(c) Subdivider hereby acknowledges that the Ordinance and Attendant Calculations have been properly passed, calculated, and imposed.

4. This Agreement constitutes a covenant that is appurtenant to and runs with the Land. Either this Agreement or a memorandum hereof may be recorded against legal title to the Land by either party hereto; provided, however, it shall be a condition of the CITY's issuance of the first building permit for a dwelling unit on the Land that Subdivider shall provide satisfactory evidence to the CITY that this Agreement or a memorandum hereof has been recorded against legal title to the Land.

5. Subdivider represents and warrants to the CITY that it is the sole holder of record fee title to the Land.

IN WITNESS WHEREOF, the CITY and Subdivider have caused this Agreement to be duly authorized, executed, and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_.

City of O'Fallon, Illinois

[SUBDIVIDER

By: \_\_\_\_\_  
Gary L. Graham, Mayor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Philip A. Goodwin, City Clerk

STATE OF ILLINOIS            )  
  ) SS.  
ST. CLAIR COUNTY            )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, **DO HEREBY CERTIFY THAT GARY L. GRAHAM**, is personally known to me to be the Mayor of the CITY OF O’FALLON, a municipal corporation, being the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument and caused the seal of said municipal corporation to be affixed thereto, pursuant to authority given by the City Council of said municipal corporation, as his own free and voluntary act and as the free and voluntary act of said municipal corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS            )  
  ) SS.  
ST. CLAIR COUNTY            )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, **DO HEREBY CERTIFY THAT** \_\_\_\_\_, is personally known to me to be the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, being the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument and caused the seal of corporation to be affixed thereto, pursuant to authority given by the governing body of said corporation, as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

Exhibit A to

AGREEMENT BETWEEN SUBDIVIDER AND CITY  
TO DELAY PAYMENT OF CASH CONTRIBUTIONS

[LEGAL DESCRIPTION OF PROPERTY TO BE INSERTED]

**Exhibit B**

**AGREEMENT REGARDING THE RECEIPT  
OF SUBDIVIDER SUBDIVISION CONTRIBUTIONS  
AND INDEMNIFICATION AGREEMENT**

WHEREAS, the City of O’Fallon, Illinois, on behalf of itself, its officers, employees, and independent contractors (the "CITY"), through its Educational Facilities Dedication and Fee-in-Lieu Ordinance (“Ordinance”) or through the provisions of its annexation agreements, has required that Subdividers make contributions to the School Districts affected by subdivisions; and

WHEREAS, such contributions may be in land or in money or a combination thereof, and, when transferred or paid over to such School Districts, shall inure in part to the benefit of those Districts and not entirely to the direct benefit of the CITY; and

WHEREAS, from time to time within the CITY, and within other municipalities, disputes may arise regarding the validity and amount of such contributions or contribution requirements; and

WHEREAS, the CITY wishes to procure a commitment from the benefited School Districts who will receive such subdivision contributions, including, but not limited to: (a) acknowledging that the requirement that such subdivision contributions be made are totally within the discretion of the CITY as to their existence, manner, and amount; (b) to pay the cost of defending any lawsuit that is filed challenging the validity of the Ordinance, the appropriate amount of the contributions, the time at which they are to be made, the ultimate use of the proceeds of the contributions by the School Districts, or any other aspect involving the application of the Ordinance; and (c) comply with the terms of a final and non-appealable judicial determination by a court of competent jurisdiction rendered in connection with the lawsuit; and

WHEREAS, the CITY has made it a condition of the effectiveness of its Ordinance that the affected School Districts execute this Agreement and maintain it in full force and effect during such time as it may accept or receive such contributions;

NOW, THEREFORE, in consideration for the payment of money or the transfer of land to the \_\_\_\_\_ ("District \_\_"), which the CITY may, from time to time, within its discretion, cause to be made by Subdividers who are subdividing property, as may be required pursuant to the Ordinance, it is agreed between the CITY and District\_\_ as follows:

1. District\_\_ acknowledges that the CITY is not obligated to cause the payment of money or the transfer of land to District\_\_. District\_\_ recognizes that the CITY may, at its sole discretion, amend its ordinances or its practices to discontinue the payment of subdivision contributions to District\_\_ and nothing in the Ordinance, any amendment thereto, or this Agreement provides District\_\_ with any claim, cause of action, or other right or entitlement to a

transfer of land, payment of a fee, or other right to enforce any obligation or claim against the CITY. District\_\_ acknowledges that execution of this Agreement is a condition to receipt of any fees or transfer of land pursuant to the Ordinance and that this Agreement has been entered into as a lawful and binding commitment of the District.

2. Legal Representation and Costs:

A. In the event an appeal is filed under the Ordinance or a lawsuit is filed against the CITY and/or District\_\_ by a Subdivider that is subdividing property, or any other person, corporation, or entity that challenges the constitutionality, legality, application, appropriateness, amount, timing, ultimate use of the proceeds generated, or any other aspect of the Ordinance, enforcement thereof, or a subdivision contribution that, pursuant to the Ordinance, has been paid or is due to District\_\_, then District\_\_ agrees to pay the costs and litigation expenses (including reasonable attorneys' fees) incurred by the CITY in defending such lawsuit. The costs and expenses shall be paid by District\_\_ when and as incurred by the CITY, but in no event more than once a month. As a condition precedent to the payment of these costs and expenses, the CITY shall submit to District\_\_ copies of the statements reflecting the costs and expenses, together with the non-privileged supporting documentation that may be reasonably requested by District\_\_. In the event an appeal or lawsuit is filed in which District \_\_ is not a party, the City shall ensure that District \_\_ has been notified of such appeal or lawsuit.

B. The CITY covenants and agrees that it shall employ competent and skilled legal counsel to represent the CITY, and further covenants and agrees that it shall keep District\_\_ fully advised as to the progress and status of the litigation. In particular, the CITY shall provide to District\_\_ copies of all pleadings filed in the litigation and shall consult regularly (and shall cause its attorneys to consult regularly) with District\_\_ or its attorneys, as applicable, as to the strategy for defending the lawsuit. In no event may such litigation be compromised or settled by the CITY without at least ten (10) days' prior written notice to District\_\_ or such District's consent.

C. In the event District\_\_ decides that it requires representation in the litigation, then District\_\_ shall be free to also retain its own legal counsel for that purpose, and to intervene in the litigation. In such event, this Agreement shall remain in full force and effect regarding all other provisions of this Agreement.

3. District\_\_ shall further indemnify and hold harmless the CITY from any and all liability arising from this Agreement and the Ordinance, including, but not limited to, the (1) general administration, application, and enforcement by the City, and (2) use and handling of funds by District\_\_ and the reliance by the CITY on such information as provided by the District\_\_, including, but not limited to, as included in the City of O'Fallon School Land Dedication and Fee-in-Lieu Study and in the "Needs Assessment and Land and Capital Facilities Acquisition Plan" required by the Ordinance.

4. In the event a final and non-appealable judicial determination is made by a court of competent jurisdiction that contributions of land or money received by District \_\_ are, in whole or in part, invalid, unenforceable, or excessive, District\_\_ shall promptly repay those

contributions to the person who procures such a judgment, together with all other amounts judged by such court to be owing from District\_\_ and the CITY. In the event a judicial determination should require the payment of damages or costs or payment of the attorneys' fees of the plaintiff's attorneys, District \_\_ shall pay all such additional amounts required to be paid by the CITY or District \_\_.

5. In further consideration of the continued authorization by the CITY enabling District\_\_ to collect the subject contributions of land or money, District\_\_ agrees that its obligations under this Agreement shall extend to both past and future cash and land contributions.

6. Upon request by the City, District\_\_ shall submit a report to the CITY describing the manner in which the payments have been used and provide any additional information the CITY may require. When that money paid to District\_\_ is to be used for a specific purpose or within a specific time period, the report shall address those issues.

7. This Agreement shall be terminable by either party for any reason or no reason upon thirty (30) days prior written notice to the other party evidencing the intention to so terminate this Agreement; provided that termination of this Agreement shall not affect the continuing obligation of District\_\_ with regard to claims or damages allegedly arising prior to termination.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006

CITY OF O'FALLON, ILLINOIS

\_\_\_\_\_ SCHOOL DISTRICT \_\_

By: \_\_\_\_\_  
Gary L. Graham, Mayor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(SEAL)

(SEAL)

ATTEST:

ATTEST:

\_\_\_\_\_  
Philip A. Goodwin, City Clerk

\_\_\_\_\_  
Secretary