

**INTERLOCAL AGREEMENT FOR THE COLLECTION, DISTRIBUTION, AND
EXPENDITURE
OF SCHOOL IMPACT FEES**

THIS AGREEMENT is entered into this _____ day of _____, 2011 (the "Effective Date") by and between King County and the Renton School District No. 403 (the "District").

WHEREAS, the Washington State Legislature passed the Growth Management Act of 1990 and 1991 RCW 36.70A *et seq.* and RCW 82.02 *et seq.* (the "Act"), which authorizes the collection of impact fees on development activity to provide public school facilities to serve new development; and

WHEREAS, the Act requires that impact fees may only be collected for public facilities which are addressed by a capital facilities element of a comprehensive land use plan; and

WHEREAS, King County has adopted King County Code (K.C.C.) Chapter 21A.43 for the purposes of implementing the Act; and

WHEREAS, the District has prepared a capital facilities plan in compliance with the Act and K.C.C. Chapter 21A.43 which has been adopted by King County as a subelement of the capital facilities element of the King County Comprehensive Plan by King County Ordinance No10982; and

WHEREAS, upon adoption of the District's Capital Facilities Plan as a subelement of the capital facilities element of the King County Comprehensive Plan, King County will collect impact fees upon certain new residential developments on behalf of the District; and

WHEREAS, King County and the District enter into this Agreement pursuant to and in accordance with the State Interlocal Cooperation Act, Chapter 39.34 RCW, for the purposes of administrating and distributing the authorized impact fees;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN, IT IS AGREED THAT:

I. GENERAL AGREEMENT

King County and the District agree to comply with the terms of this Agreement which govern the collection, distribution, and expenditure of school impact fees.

II. RESPONSIBILITIES OF THE DISTRICT

The District, by and through its employees, agents, and representatives, agrees to:

- A. Annually submit to King County a six-year capital facilities plan or an update of a previously adopted plan which meets the requirements of the Act and K.C.C. Chapter 21A.43 on or before April 1 each year.

- B. Authorize King County, as Treasurer for the District, to establish a District Impact Fee Fund in which impact fee revenues, interest revenues and transfers of impact fees to the District Capital Projects Fund or Debt Service Fund will be recorded.
- C. Request transfers from the County Agency Fund, established in Section III (B) of this Agreement, to the District Capital Projects Fund or Debt Service Fund on a transfer request form. The form shall be substantially in the form set forth as Attachment A. The request shall include a certification that the District has expended or will expend the funds on facilities identified in the District's Capital Facilities Plan, which has been adopted by King County as a subelement of the capital facilities element of the King County Comprehensive Plan, and for expenditures authorized by K.C.C. 21A.43.090. The District shall provide to King County a list of individuals authorized to certify requests for transfers.
- D. Issue a warrant or warrants for the funds prior to submitting a request for transfer or issue a warrant or warrants for the funds within five days after the funds have been transferred into the District Capital Projects Fund or Debt Service Fund. The District may request that King County transfer funds on a date certain, and such request shall be submitted to King County at least five days prior to the date certain.
- E. Expend impact fee revenues provided to the District under this Agreement, and all interest proceeds on such revenues, solely for expenditures authorized by K.C.C. 21A.43.090 related to facilities identified in the District's Capital Facilities Plan as adopted by King County as a subelement of capital facilities element of the King County Comprehensive Plan.
- F. Prepare an annual report in accordance with the requirements of RCW 82.02.070 and K.C.C. Chapter 21A.43 showing the system improvements that were financed in whole or in part by impact fees and the amount of funds expended. The District's annual report shall be sent to the School Technical Review Committee, King County Department of Development and Environmental Services, 900 Oakesdale Avenue SW, Renton, WA 98057 on or before April 1 each year for the preceding calendar year.
- G. Refund impact fees and interest earned on impact fees which have been disbursed to the District Capital Projects Fund or Debt Service Fund pursuant to Section II (C) and III (E) of this Agreement when a refund is required under applicable law; including but not limited to (1) when the proposed development activity does not proceed and no impact to the District has resulted, unless the District determines that it has expended or encumbered the fees in good faith prior to the application for a refund, (2) when the impact fees or interest earned on impact fees are not expended or encumbered within the time limits established by law, or (3) when the school impact fee program is terminated.
- H. Maintain all accounts and records necessary to ensure proper accounting for all impact fee funds and compliance with this Agreement, the Act, and King County K.C.C. Chapter 21A.43.
- I. Comply with the State Environmental Policy Act, Chapter 43.21C RCW.

III. RESPONSIBILITIES OF KING COUNTY

King County, by and through its employees, agents, and representatives, agrees to:

- A. Timely review and take action on the District's updated Capital Facilities Plan and revised impact fee schedule for the District.
- B. Deposit all impact fees collected on behalf of the District and interest earned thereon in a County Agency Fund with specific organizational identity for the District. Funds received by King County Department of Development and Environmental Services and attributed to impact fees shall not be available for transfer to the District before the point in the development process when the fee is due as set forth in K.C.C. 21A.43.050, as may be amended from time to time, and full payment has been made. Interest shall accrue on the impact fees starting the date the impact fees are paid to King County except for those that are paid before they are due. For the latter category, interest shall accrue to those impact fees starting on the date that they are due and payment has been made.
- C. Invest cash balances in the County Agency Fund through its Office of Financial Management ("OFM"). King County shall distribute the District's pro-rata share of the County Agency Fund interest earnings on the first of the following month to the District's organizational identity within the County Agency Fund.
- D. Distribute reports weekly and monthly to the District on the amount of impact fees and interest attributed to the District in the County Agency Fund.
- E. Initiate an Interfund Transfer from the County Agency Fund to the District Capital Projects Fund or Debt Service Fund upon receipt of a completed transfer request on an approved form. The form should be substantially in the form set forth as Attachment A to this Agreement. King County shall transfer the funds within five days of the date of the District's request or on the date certain requested by the District, provided that the date certain is at least five days after the date of the request. King County, as the Treasurer for the District, will not charge the District any fees or penalties for overdrafts on the District Capital Projects Fund or Debt Service Fund caused by King County's failure to timely comply with this requirement. In the event that a charge is applied, King County shall delete the charge.
- F. Complete a General Journal Entry in the School District Impact Fee Fund to reflect the transfer of impact fees to the District Capital Projects Fund or Debt Service Fund.
- G. Refund impact fees and interest earned on impact fees which are held in the County Agency Fund when a refund is required under applicable law.
- H. Prepare an annual report showing the source and amount of all fees collected, interest earned on behalf of the District, the amount of funds distributed to the District, and the system improvements that were financed in whole or in part by impact fees and the amount of funds expended as reported by the District pursuant to Section II (F) of this Agreement.

- I. Determine whether applicants for low-income exemptions approved by the District are qualified pursuant to K.C.C. Chapter 21A.43.
- J. Determine whether applicants are excluded from the application of the impact fee pursuant to K.C.C. 21A.43.070A, as may be amended from time to time.
- K. Cooperate with the District and assist the District in determining student generation factors of new developments and/or document demographic similarities between King County school districts.

IV. GENERAL TERMS

- A. This Agreement shall become effective when executed by both parties and shall remain in effect until terminated pursuant to section VII of this Agreement.
- B. It is recognized that amendments to this Agreement may become necessary, and such amendment shall become effective only when the parties have executed a written addendum to this Agreement.
- C. The parties acknowledge that King County is vested with the authority to impose and collect school impact fees. The parties agree that King County shall in no event be liable to the District for the payment of money in connection with the school impact fee program, with the exception of remitting to the District the impact fees collected for the District and the interest earned thereon.

V. AUDIT

- A. The District's records and documents with respect to all matters covered by this Agreement shall be subject to inspection, review, or audit by King County or appropriate state agency.
- B. The District agrees to cooperate with any monitoring or evaluation activities conducted by King County that pertain to the subject of this Agreement. The District agrees to allow King County, or appropriate state agencies and/or any of their employees, agents, or representatives to have full access to and the right to examine during normal business hours, all of the District's records with respect to all matters covered by this Agreement. King County and/or any of its employees, agents, or representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all invoices, materials, payrolls, and record of matters covered by this Agreement. King County will give fifteen days advance notice to the District of fiscal audits to be conducted.
- C. The results and records of said audit shall be maintained and disclosed in accordance with Chapter 42.17 RCW.

VI. HOLD HARMLESS

- A. The District shall, at its own cost and expense, protect, defend, indemnify, and hold harmless King County, its officers, employees, and agents, from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the acts or omissions of the District, its officers, employees, or

agents, relating to the District's implementation of the King County school impact fee program.

- B. The District further agrees that the District shall, at its own cost and expense, protect, defend, indemnify, and hold harmless King County, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the District's failure to refund impact fees, including but not limited to a determination that impact fees from development activity that was not completed are not refundable because the funds were expended or encumbered by the District whether or not the District's determination was made in good faith; provided, however, that if the District offers to defend, the District shall not be liable for any of King County's attorney's fees or litigation costs incurred after such offer to defend is made; provided, further, that if the District authorizes King County to refund any impact fees from the County Agency Fund, and King County fails to do so, this subsection (VI B) shall not apply.
- C. The District's duties to King County under this section shall not be diminished or extinguished by the prior termination of this Agreement pursuant to Section VII.
- D. King County shall, at its own cost and expense, protect, defend, indemnify, and hold harmless the District, its officers, employees, and agents from that portion of any costs, claims, judgments, or awards of damages that exceeds the amount of impact fees King County has collected on behalf of the District resulting from King County's (by its officers, employees, agents, or representatives) failure to perform its duties under this Agreement or the terms of K.C.C. Chapter 21A.43, all as may be amended from time to time; provided, however, that if King County offers to defend, King County shall not be liable for any of the District's attorney's fees or litigation costs incurred after such offer to defend is made.

It is the intent of this subsection (VI D) that any liability created by King County's performance of its duties under this Agreement or under the terms of King County K.C.C. Chapter 21A.43 be satisfied first out of any impact fees attributable to the activity out of which the liability arises that have been collected by King County on behalf of the District for the particular development activity at issue, and only in the event that such impact fees collected for the particular development activity at issue are insufficient, shall King County be liable to satisfy the liability.

- E. King County's duties to the District under this section shall not be diminished or extinguished by the prior termination of this Agreement pursuant to Section VII.

VII. DURATION; TERMINATION

- A. The term of this Agreement shall commence upon the Effective Date.
- B. King County may terminate its obligation to collect impact fees under this Agreement, in whole or in part, at any time without cause. All other obligations under this Agreement shall remain in effect while the District or King County on behalf of the District retain unexpended or unencumbered impact fees and interest earned thereon.
- C. The parties may agree in writing to terminate the Agreement.

- D. The obligations under Section VI of this Agreement shall be continuing and shall not be diminished or extinguished by the termination of this Agreement.
- E. King County, as the official fiscal agent, shall have the authority to ensure that upon termination of this Agreement, any remaining unexpended or unencumbered impact fees and interest earned thereon are refunded pursuant to RCW 82.02.080.
- F. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Agreement or by law that either party may have in the event that the obligations, terms, and conditions set forth in this Agreement are breached by the other party.

VIII. SEVERABILITY

In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement which can be given effect without the invalid term, condition or application. To this end the terms and conditions of this Agreement are declared severable.

IX. NONDISCRIMINATION

There shall be no discrimination against any employee or independent contractor paid by any funds which are the subject of this Agreement or against any applicant for such employment because of race, religion, color, sex, age, sexual orientation, handicap, or national origin. This provision shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training.

The District and any independent contractor paid by funds which are the subject of this Agreement shall comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended.

X. RIGHTS TO OTHER PARTIES

It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and conveys no right to any other party.

XI. GOVERNING LAW AND FILING

This Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of Washington. This Agreement shall be filed with the clerk of the District, the King County Records and Election Division, the Secretary of State and the Washington Department of Commerce, Local Government and Infrastructure Division.

XIII. ADMINISTRATION

A. King County's contract administrator shall be

Address: Dave Sandstrom, Project/Program Manager III
900 Oakesdale Ave SW
Renton, WA 98057
Phone: (206) 296-7184

B. The District's contract administrator shall be

Address: John Knutson, Assistant Superintendent: Business
300 SW 7th Street
Renton, WA 98057
Phone: (425) 204-2361

XIV. NO SEPARATE LEGAL ENTITY

This Agreement does not establish a separate legal entity to conduct the cooperative undertaking.

XV. ENTIRE AGREEMENT/WAIVER OF DEFAULT

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by King County and the District, which shall be attached to the original Agreement.

XVI. MISCELLANEOUS

This Agreement shall be construed as a whole. The misplacement, addition or omission of a word or character shall not change the intent of any part of this Agreement from that set forth by this Agreement as a whole. All provisions and parts of this Agreement are intended to be correlative and complementary. The headings of sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

KING COUNTY, WASHINGTON

SCHOOL DISTRICT

Dow Constantine
King County Executive

Dr. Mary Alice Heuschel
Superintendent

APPROVED AS TO FORM:

King County Prosecuting
Attorney

School District Legal Counsel