

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

THIS AGREEMENT is entered into this 20th day of December, 1999, by and between the City of Washougal (the "City") and the Washougal School District No. 112 (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, the City has adopted Ordinance 1366 for the purposes of implementing the Act for the collection of school impact fees; and

WHEREAS, the District has prepared a capital facilities plan in compliance with the Act and Ordinance 1363 which is to be adopted by the City as a subelement of the capital facilities element of the City's Comprehensive Plan.

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

WHEREAS, the City 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 administering and distributing the authorized impact fees,

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

1. General Agreement. The City and the District agree to comply with the terms of this Agreement, which govern the collection, distribution, and expenditure of school impact fees.
2. Responsibilities of the District. The District, by and through its employees, agents, and representatives, agrees to:
 - 2.1. Annually submit to the City a six-year capital facilities plan or an update of a previously adopted plan, which meets the requirements of the Act and City Ordinance 1363 on or before April 1st each year.

- 2.2. Authorize the Clark County Treasurer, as Treasurer for the District, to establish a Subfund in the District's Capital Projects Fund, with special coding, that permits only impact fee revenue to be deposited to this Subfund. Impact Fee revenues will be deposited to this Subfund and investment revenues will inure to the benefit of this Subfund.
- 2.3. Expend impact fee revenues provided to the District under this Agreement, and all interest proceeds on such revenues, solely for expenditures authorized by Ordinance 1363 related to facilities identified in the District's Capital Facilities Plan as adopted by the City as a subelement of the capital facilities element of the City's Comprehensive Plan.
- 2.4. Submit documentation in accordance with the requirements of RCW 82.02.070 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 submitted to the City on or before December 1st each year for the preceding fiscal year.
- 2.5. Refund impact fees and interest earned on impact fees which have been disbursed to the District Capital Projects Fund or Debt Service Fund 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.
- 2.6. Maintain all accounts and records necessary to ensure proper accounting for all impact fee funds and compliance with this Agreement, the Act, and City Ordinance 1366.
3. Responsibilities of the City. The City, by and through its employees, agents, and representatives, agrees to:
 - 3.1 Timely review and take action on the District's updated Capital Facilities Plan and revised impact fee schedule for the District
 - 3.2 Deposit all impact fees collected on behalf of the District in the City's Growth Management Act Fund with specific organizational identity for the District. Funds received by the City Building Department and attributed to impact fees shall not be available for transfer to the District until issuance of the building permit and full payment has been made.

- 3.3. Distribute reports monthly to the District on the amount of impact fees collected, the person or entity who paid the fees and a description of the property where the development paying the fees is located.
- 3.4. Initiate an Interfund Transfer from the City's Growth Management Act Fund to the County Treasurer on a monthly basis.
- 3.5. Determine whether exemptions from the payment of impact fees should be made pursuant to the Ordinance 1366.
- 3.6. Cooperate with the District and assist the District in determining student generation factors of new developments and/or other demographic and development information.

4. General Terms.

- 4.1. This Agreement shall become effective when executed by both parties and shall remain in effect until terminated pursuant to Section 5 of this Agreement.
- 4.2. 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.
- 4.3. The parties acknowledge that the City is vested with the authority to impose and collect school impact fees. The parties agree that the City 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.

5. Termination.

- 5.1. The obligation to collect impact fees under this Agreement may be terminated without cause by the City or the District, in whole or in part, at any time. All other obligations under this Agreement shall remain in effect until both of the following conditions have been satisfied: (1) the City or the District provides written notice that this Agreement is being terminated; and (2) neither the District nor the City on behalf of the District retain unexpended or unencumbered impact fees and interest earned thereon.
- 5.2. 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 the Agreement are breached by the other party.

6. 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 terms, condition or application. To this end the terms and conditions of this Agreement are declared severable.

7. 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.

8. 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.

9. 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 Washougal City Clerk, the Clark County Auditor, the Secretary of State, and the Washington Department of Community Development.

10. Administration.

10.1. The City's representative shall be:

Finance Director
1701 "C" Street
Washougal, WA 98671
Phone: (360) 835-8501

10.2. The District's representative shall be:

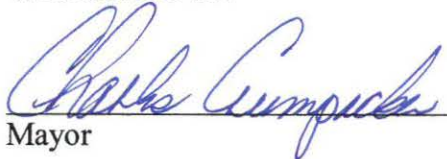
Superintendent
2349 "B" Street
Washougal, WA 98671
Phone: (360) 834-2191

11. 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 this Agreement shall not be deemed to be 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 the City and the District, which shall be attached to the original Agreement.

12. Indemnification The District shall indemnify and hold harmless the City, its employees, agents and representatives from any and all claims, actions, suites, liability, loss, costs, expenses and damages of any nature arising in connection with the City's passage of the school impact fee ordinance or the administration of the terms of the ordinance, except when such claim action or suite arises from the sole negligence of the City.

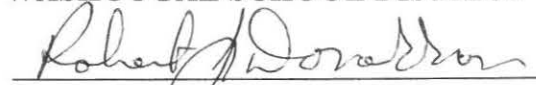
In the event that any suite based upon such a claim, action, loss, or damage is brought against the City, the District shall defend the same as its sole cost and expense; provided that the City retains the right to participate in said suit if any principle of governmental or public law is involved; and if a final judgement is rendered against the City, or its officers, agents, employees or representatives except when said judgement is based on the sole negligence of the City, the District shall satisfy the same.

**THE CITY OF WASHOUGAL,
WASHINGTON**

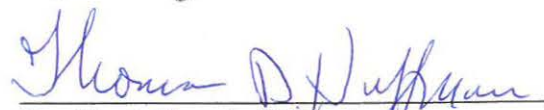


Mayor

WASHOUGAL SCHOOL DISTRICT

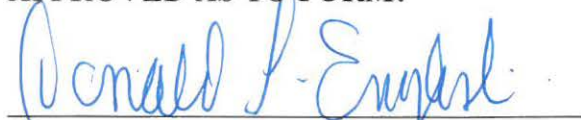


Superintendent



President, Board of Directors

APPROVED AS TO FORM:



City Attorney