

INTERLOCAL (ISSAQUAH SCHOOL DISTRICT) AGREEMENT FOR THE COLLECTION, DISTRIBUTION, AND EXPENDITURE OF SCHOOL IMPACT FEES

THIS AGREEMENT is entered into the 18TH day of November, 2009 by the City of Sammamish (the "City") and the Issaquah School District #411 (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 O2003-131 for the purpose of implementing the Act; and

WHEREAS, the District has prepared a capital facilities plan in compliance with the Act; and

WHEREAS, upon adoption of the District's capital facilities plan as an element of the capital facilities element of the City of Sammamish 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 administrating and distributing the authorized impact fees;

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

I. 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.

II. RESPONSIBILITIES OF THE DISTRICT

- A. 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 the Sammamish Municipal Code.
- B. Authorize the City to collect impact fees for the District and remit the impact fees to the District monthly.
- C. Authorize the City to collect an administrative fee from the fee-payor for each impact fee collected, provided that, in no case shall the City be permitted to deduct the administrative fee from the assessed impact fee.

- D. Expend impact fee revenues provided to the District under this Agreement, and all interest proceeds on such revenues, for expenditures authorized by SMC 21A.105.090(2) of the SMC.
- E. Prepare an annual report in accordance with the requirements of 82.02.070 and Section 21A.105.090(1) of SMC showing the system improvements that were financed in whole or in part by impact fees and the amount of funds expended. The annual report shall be sent to the City on or before April 1st of each year for the preceding calendar year.
- F. Refund impact fees and interest earned on impact fees 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.
- G. Maintain all accounts and records necessary to ensure proper accounting for all impact fees funds and compliance with the Agreement, the Act and Ordinance No. O2003-131.

III. RESPONSIBILITIES OF THE CITY

- A. Timely review and take action on the District's updated Capital Facilities Plan and the District's revised impact fee schedule.
- B. Remit to the District promptly (i.e. monthly) all impact fees collected on behalf of the District accompanied by a report of the impact fees paid by date, amount, and payer name.
- C. Determine whether applicants are excluded from the application of the impact fee pursuant to Section 21A.105.070 of the Sammamish Municipal Code.

IV. GENERAL TERMS

- A. This Agreement shall be effective when executed by both parties.
- 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, except as otherwise specifically provided for herein, the City shall in no event be responsible for the payment of any funds to the District, except for impact fees collected for the District.

V. AUDIT

- A. The District's records and documents with respect to all matter covered by this Agreement shall be subject to inspection, review or audit by the City or an appropriate state agency.
- B. The District agrees to cooperate with any monitoring or evaluation activities conducted by the City that pertain to the subject of the Agreement. The District agrees to allow the City, 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. The City 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, material, payrolls, and record of matter covered by the Agreement. The City 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 42.56 RCW.

VI. HOLD HARMLESS

- A. The District shall, at its cost and expense, protect, defend, indemnify, and hold harmless the City, 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 in any way to the City school impact fee program. By way of example, and not of limitation, of the foregoing, the District shall protect, defend, indemnify and hold harmless the City, 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 (by its officers, employees, agents, or representative) negligent acts or omissions, intentional acts or omissions, any liability arising from an audit of the District's impact fee account, or failure for any reason to comply with the terms of this Agreement, the terms of the Act, or the terms of the Sammamish Municipal Code, all as may be amended from time to time.
- B. The District further agrees that the District shall protect, defend, indemnify, and hold harmless the City, 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 a 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 the City's attorney's fees or 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 the County fails to do so, this section shall not apply.
- C. The District's duties to the City under this section shall not be diminished or extinguished by the prior termination of this Agreement pursuant to Section VII.

- D. The City 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 exceed the amount of impact fees the City has collected on behalf of the District resulting from the City's (by its officers, employees, agents, or representative) negligent acts or omissions; intentional acts or omissions; or failure for any reason to comply with the terms of this Agreement, the terms of the Act, or the terms of the Sammamish Municipal Code, all as may be amended from time to time. It is the intent of this Section (VI D) that any liability created by the City's performance of its duties under this Agreement, the Act, or the terms of the Sammamish Municipal Code, be satisfied first out of any impact fees attributable to the activity out of which the liability arises that have been collected by the City of 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 the City be liable to satisfy the liability.
- E. The City'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. TERMINATION

- A. The obligation to collect impact fees under this Agreement may be terminated without cause by the City, in whole or in part, at any time. All other obligations under this Agreement shall remain in effect so long as the City or the District retain unexpended or unencumbered funds. The obligations under Section VI of this Agreement shall be continuing and shall not be diminished or extinguished by the termination of this Agreement.
- B. The City shall have the authority to ensure that upon termination of this Agreement, any remaining unexpended or unencumbered funds are refunded pursuant to RCW 82.02.080.
- C. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Agreement or 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 State Department of Commerce.

XII. ADMINISTRATION

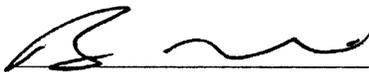
A. The City's Representative shall be: Ben Yazici, City Manager
City of Sammamish
801 228th Avenue SE
Sammamish, WA 98075
(425) 295-0500

B. The District's Representative shall be: Jacob Kuper
Chief of Finance and Operations
Issaquah School District
565 NW Holly Street
Issaquah, WA 98027
(425) 837-7000

XIII. 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 waiver of any subsequent default. Waiver or breach of any provision of the 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, which shall be attached to the original Agreement.

THE CITY OF SAMMAMISH



Ben Yazici, City Manager

APPROVED AS TO FORM:



Bruce L. Disend, City Attorney

ISSAQUAH SCHOOL DISTRICT #411



Superintendent

APPROVED AS TO FORM:



District Attorney