

**INTERLOCAL AGREEMENT
BETWEEN ISSAQUAH AND ISSAQUAH SCHOOL DISTRICT**

THIS AGREEMENT is entered into this 21st day of August, 1995, by and between the City of Issaquah (the "City" hereinafter) and the Issaquah School District (the "District" hereinafter).

WHEREAS, the Washington State Legislature passed the Growth Management Act, Chapter 36.70A RCW, and Chapter 82.02 RCW (the "Act" hereinafter), which authorizes the imposition of impact fees on development activity as part of the financing for public facilities, which financing must provide for a balance between impact fees and other sources of public funds; and

WHEREAS, the Act allows the collection and expenditure of impact fees only on public facilities which are addressed by a capital facilities element of a comprehensive land use plan adopted under the Act; and

WHEREAS, the District has prepared a capital facilities plan, and authorization to collect and expend fees is contingent upon the City's adopting the District's Capital Facilities Plan (CFP) as part of the City's Comprehensive Plan, all as required by RCW 36.70A.070, and on the plan's adherence with the statutory requirements of the Act; and

WHEREAS, the City has adopted Ordinance No. 2074 (the "school impact fee ordinance"), which describes the features of the school impact fee program, and allows the District to receive and expend school impact fees in conformance with the Act; and

WHEREAS, the City and the District have entered into this Interlocal Agreement pursuant to Chapter 39.34 RCW, for the purposes of setting forth the duties and responsibilities of the parties with regard to the school impact fee program.

NOW, THEREFORE, in consideration of the mutual promises herein, the parties agree as follows:

I. RESPONSIBILITIES OF THE DISTRICT

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

A. Annually submit to the City a six-year capital facilities plan or an update of the previously adopted plan, together with an impact fee schedule, which meets the requirements of the Act and the school impact fee ordinance on or before April 1st of each year. In addition,

the District shall submit all other information required by Section 6(A) of the school impact fee ordinance.

B. Assist the City if the school impact fees are challenged.

C. Establish and maintain impact fee accounts, as required by RCW 82.02.070.

D. Prepare a report to the City to allow the City to meet the requirements of RCW 82.02.070(1) and submit such report to the City on or before April 1 of each year, showing the source and amount of all moneys collected, earned or received and system improvements that were financed in whole or in part by impact fees.

E. Provide for proper expenditure of impact fees, as provided in RCW 82.02.050(4) and 82.02.070(2).

F. Encumber or expend impact fees as provided in RCW 82.02.070(3), and where the District has extraordinary and compelling reasons for noncompliance with this statute, the District shall identify such reasons in written findings, to the City Council.

G. Notify property owners of refunds under RCW 82.02.080 and the processing and payment of any refunds, together with any interest which may be due.

H. Review all covenants and declaration of restrictions for form, as these documents are required to maintain exemptions from payment of impact fees.

I. Maintain all accounts and records necessary to ensure compliance with this Agreement, the school impact fee ordinance and all other applicable law.

II. RESPONSIBILITIES OF THE CITY

The City, by and through its officers, officials, employees, agents and representatives, agrees to:

- A. Be responsible for all administrative aspects of the impact fee program, including:
1. the determination, pursuant to the school impact fee ordinance, whether or not residential development activity in the City is exempt from payment of fees;
 2. the calculation of the fee amount for any non-exempt residential development activity, based upon the schedule of fees adopted by the City pursuant to the school impact fee ordinance;

3. the receipt of the fees from the applicant;
4. imposition and collection of the administrative or permit application fees associated with the impact fee program and the development activity.

B. Establish and maintain school impact fee accounts pursuant to RCW 82.02.070, so that impact fees can be transferred to the District on a monthly basis.

C. Develop a report on the school impact fee account as required by RCW 82.02.070(1), and review of the District's report required by RCW 82.02.050(4), detailing the fees received and the system improvements financed in whole or in part by the fees.

D. When City permits have been applied for, enforce covenants or declaration of covenants and restrictions, where the same have been executed as a condition of exemption from school impact fees. When permits are not applied for, the City shall advise the District of any potential enforcement action, and the District will elect whether to take enforcement action at its expense or to reimburse the City for the City's cost of enforcement.

III. 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 the City or 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 this 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, audit, make excerpts or transcripts, during normal business hours, all of the District's records with respect to all matters covered by this Agreement. The City shall provide _____ days advance notice to the District of fiscal audits to be conducted.

IV. INDEMNIFICATION AND HOLD HARMLESS

A. The District shall, at its own 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 to the District's implementation of the school impact fee program, performance of the duties set forth in paragraph I of this Agreement, or compliance with the terms of Ordinance No. 2074, all as may be amended from time to time. This indemnification by the District of the City shall include, but not be limited to:

1. The District's responsibility to refund any fees with interest, which are determined by a court of competent jurisdiction to have been improperly paid, regardless of whether the City erroneously required the fee amount;
2. The District's agreement not to impose any liability on the City for the City's failure to collect the proper fee amount or any fee from a developer conducting any development activity, provided that the City shall make reasonable attempts to collect such fee.

B. The District shall, at its own 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, resulting from a challenge to the legality of Ordinance No. ~~2074~~, or resulting from any claim for compensation under Initiative 164 or similar legislation; 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 litigation costs incurred after such offer to defend is made.

C. The District further agrees that the District shall, at its own 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 District's failure to refund impact fees, or interest on such 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 the City's attorney's fees or litigation costs incurred after such offer to defend is made.

D. 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 V.

E. Except as provided in paragraphs A, B and C, the City shall, at its own cost and expense, protect, defend, indemnify and hold harmless the District, its officers, employees, or 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 City, its officers, employees or agents, relating to the City's implementation of the school impact fee program, performance of the duties set forth in Paragraph II of this Agreement, or the terms of Ordinance No. ~~2074~~, all as may be amended from time to time; provided however, that if the City offers to defend, the City shall not be liable for any of the District's attorney's fees or litigation costs incurred after such offer to defend is made, and provided further that the District shall promptly refund any fees as required by a final court order including payment of any pre- or postjudgment interest.

F. The City's duties to the District under this Section shall not be diminished or extinguished by prior termination of this Agreement pursuant to Section V.

V. EFFECTIVE DATE AND TERMINATION

A. The District's authorization to receive impact fees under this Agreement may be terminated without cause by the City, in whole or in part, at any time, but only upon the repeal or invalidation of Ordinance No. 2074. 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. the District no longer retains unexpended or unencumbered impact fees and interest earned thereon.

The obligations under Section IV, Indemnification, shall be continuing and shall not be diminished or extinguished by the termination of this Agreement.

B. The District shall have the duty to ensure that upon termination of this Agreement, any remaining unexpended or unencumbered impact fees and interest earned thereon are either properly expended or refunded pursuant to Chapter 82.02 RCW.

C. 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.

VI. MODIFICATION

No changes or modifications of this Agreement shall be valid or binding upon either party unless such changes or modifications are in writing and executed by both parties.

VII. INTEGRATION

This Agreement, together with the school impact fee ordinance, contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to bind either party.

VIII. SEVERABILITY

In the event that 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. RIGHTS OF 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.

X. DISPUTES

Jurisdiction of any dispute arising under this Agreement shall be in King County Superior Court, and the substantially prevailing party shall be entitled to recover its costs and reasonable attorneys' fees.

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 become effective following occurrence of the following:

- A. Approval of the Agreement by the official action of the governing bodies of each of the parties hereto;
- B. Execution of the Agreement by the duly authorized representative of each of the parties hereto;
- C. The filing of a copy of this Agreement with the following public officials:
 - 1. The City Clerk of the City of Issaquah;
 - 2. The Secretary of the Board of Directors of the Issaquah School District;
and
 - 3. The King County Records and Elections Division.

XII. ADMINISTRATION

- A. The City's representative for purposes of administering this Agreement is:
the City Administrator or his/her designee.
- B. The District's representative for purposes of administering this Agreement is:
the Superintendent or his/her designee


XIII. WAIVER OF DEFAULT

Waiver of any default in the performance of this Agreement 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 waiver of any other or subsequent breach and shall not be construed to be a modification of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date and year set forth below.

THE CITY OF ISSAQUAH:

ISSAQUAH SCHOOL DISTRICT:

By: 
Its Mayor

By: 
Its President, Board of Directors

APPROVED AS TO FORM
OFFICE OF THE CITY ATTORNEY:

APPROVED AS TO FORM
SCHOOL DISTRICT ATTORNEY:





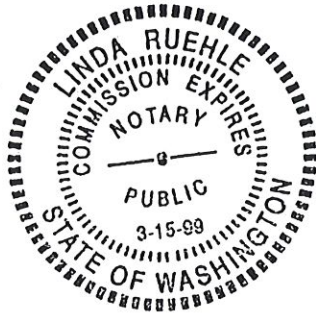
ATTEST/AUTHENTICATED:


CITY CLERK. LINDA RUEHLE

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Rowan Hinds is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of the City of Issaquah to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: August 21, 1995



Linda Ruehle
NOTARY PUBLIC in and for the
State of Washington, residing
at: Issaquah
My Commission expires: 3/15/99

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that David W. Irons is the person who appeared before me, and said person acknowledged that ~~(he/she)~~ signed this instrument, on oath stated that ~~(he/she)~~ was authorized to execute the instrument and acknowledged it as the School Board President of the Issaquah School District to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: September 13, 1995



Lorraine D. Morton
NOTARY PUBLIC in and for the
State of Washington, residing
at: Issaquah, WA
My Commission expires: 3-1-96