

**SCHOOL IMPACT FEE INTERLOCAL AGREEMENT
BETWEEN RENTON AND ISSAQUAH SCHOOL DISTRICT**

THIS AGREEMENT is entered into this _____ day of _____, 2012, by and between the City of Renton (hereinafter "City"), a noncharter code city under RCW 35A, and a municipal corporation under the laws of the State of Washington, and the Issaquah School District (hereinafter "District").

WHEREAS, the Washington State Legislature passed RCW 36.70A, the Growth Management Act, and RCW 82.02.050 – 110 (Impact fees) (hereinafter "Act"), as they exist or may be amended, which authorizes the imposition of impact fees on new growth and development activity for the purpose of having that new growth and development pay a proportionate share of the costs of new facilities required based on that new growth and development; and

WHEREAS, RCW 82.02.050(2) and (4) (Impact fees – Intent – Limitations), as they exist or may be amended, permits the collection and expenditure of impact fees only on public facilities as part of the financing for public facilities, provided that the financing for system improvements to serve new development must provide for a balance between impact fees and other sources of public funds and cannot rely solely on impact fees; and

WHEREAS, consistent with the requirements of RCW 82.02.050(4), as it exists or may be amended, the District has prepared a Capital Facilities Plan (CFP), and authorization to collect and expend fees is contingent upon the City's adoption of the District's CFP as part of the City's Comprehensive Plan consistent with the requirements of RCW 36.70A.070(3) (Comprehensive plans – Mandatory elements), as it exists or may be amended, and on the CFP's adherence with the statutory requirements of the Act; and

WHEREAS, the Issaquah School District has identified a need and has asked the City of Renton to collect any school impact fee (SIF) on its behalf.

WHEREAS, to collect SIFs on behalf of the District, the City has adopted a school impact fee ordinance, RMC 4-1-160, as it exists or may be amended, which describes the features of the school impact fee program and allows the District to receive and expend any SIF in conformity with the Act; and

WHEREAS, the City and the District have entered into this Interlocal Agreement, pursuant to RCW 39.34 (Interlocal Cooperation Act), for the purposes of setting forth the duties and responsibilities of the parties with regard to the collection and distribution of any SIF to the District and the District's obligation to comply with the Act.

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

I. RESPONSIBILITIES OF THE ISSAQUAH SCHOOL DISTRICT

The District, by and through its elected officials, officers, 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 CFP, together with a SIF schedule, which meets the requirements of the Act and the SIF ordinance on or before April 1st of each year. In addition, the District shall submit all other information required by the SIF ordinance.

B. Be solely responsible for defending the any received SIF if that SIF is challenged, contested, or if a refund is requested.

C. Establish and maintain at least one SIF account, as required by RCW 82.02.070 (Impact fees — Retained in special accounts — Limitations on use — Administrative appeals), as it exists or may be amended.

D. Prepare a report sufficient to satisfy the requirements of RCW 82.02.070(1), as it exists or may be amended, and submit such report to the City on or before April 1 or 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 SIFs.

E. Provide for proper expenditure of any SIF, as provided in RCW 82.02.050(4), and 82.02.070(2), as they exist or may be amended.

F. Encumber or expend impact fees as provided in RCW 82.02.070(3), as it exists or may be amended, 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 of Renton.

G. Notify property owners of refunds under RCW 82.02.080 (Impact fees — Refunds), as it exists or may be amended), 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 any SIF.

I. Maintain all accounts and records necessary to ensure compliance with this Agreement, the SIF ordinance, and all other applicable laws.

II. RESPONSIBILITIES OF THE CITY

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

- A. Be responsible for administering the SIF program, including:
1. The determination, pursuant to the SIF ordinance, whether or not residential development activity in the City is exempt from payment of fees;
 2. The calculation of the SIF amount for any non-exempt residential development activity, based upon the schedule of fees adopted by the City pursuant to the SIF ordinance;
 3. The receipt of any SIF from the applicant, owner, or developer;
 4. The imposition and collection of the administrative or permit application fees associated with the SIF program and the development activity.
- B. Transfer all SIF to the District on a periodic basis when funds have accumulated and the Renton Administrative Services Department determines that there are sufficient funds to make the transfer advisable.
- C. Provide accounting information to and review the District's report required by RCW 82.02.050(4), as it exists or may be amended, 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 the payment of a SIF. 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 of 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 a state agency to ensure or verify compliance with the Act.
- 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 a state agency and/or any of their employees, agents or representatives, to have full access to and the right to inspect, review, audit, make notes, copies, excerpts or transcripts, during normal business hours, of all District records related to the subject matter of this Agreement. The City shall provide 30 calendar 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 elected officials, officers, employees and agents, from any and all costs, claims, judgments or awards of damages, or fees arising out of or in any way resulting from the acts or omissions of the District, its elected officials, officers, employees or agents, relating to the District's implementation of the SIF program, performance of the duties set forth in paragraph I (Responsibilities of the Issaquah School District) of this ILA, or compliance with the terms of the SIF ordinance, (RMC 4-1-160) as it exists or may be amended. This indemnification by the District of the City shall include, but not be limited to:

1. The District's responsibility to refund any SIF with interest, which are determined by a court of competent jurisdiction to have been improperly paid, regardless of whether the City erroneously required the SIF 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 a reasonable attempt, in the form of a demand, to collect any such SIF.

B. The District shall, at its own cost and expense, protect, defend, indemnify, and hold harmless the City, its elected officials, officers, employees, and agents, from any and all costs, claims, judgments, or awards of damages, resulting from a challenge to the legality of the SIF ordinance, (RMC 4-1-160) as it exists or may be amended, challenge to the legality of any SIF collected, defense of any appeal or lawsuit related to any SIF calculations, any claim for a refund, or resulting from any claim for compensation; provided, however, that if the District offers to defend any claim, appeal, or lawsuit, the District shall not be liable for any of the City's attorney's fees or litigation costs incurred if the City rejects the District's offer to defend.

C. The District further agrees that the District shall, at its own cost and expense, protect, defend, indemnify, and hold harmless the City, its elected officials, officers, employees, and agents from any and all costs, claims, judgments, fees or awards of damages arising out of or in any way resulting from the District's failure to refund any SIF, or interest on such SIF, including but not limited to a determination that the SIF 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 if the City rejects the District's offer to defend.

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 VI (Termination).

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 elected officials, officers, employees, or agents, from any and all costs, claims, judgments or awards of damages, arising out of or in any way resulting from intentional negligence of the City, its officers, employees or agents, relating to the City's implementation of the SIF program, performance of the duties set forth in section II of this Agreement, or the terms of the SIF ordinance, (RMC 4-1-160) as it exists or may be amended; 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 if the City rejects the District's offer to defend, and provided further that the District shall promptly refund any fees as required by a final court order including payment of any pre- or post-judgment 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 VI (Termination).

V. EFFECTIVE DATE

This ILA shall be effective immediately upon execution by the representative of the City of Renton and the representative of the Issaquah School District. The parties intend and agree that the actual effect shall apply to any and all SIF received after December 1, 2012.

VI. TERMINATION

A. The District's authorization to receive any SIF under this Agreement may be terminated without cause by the City, in whole or in part, at any time, but only upon the repeal, suspension or invalidation of the SIF ordinance, (RMC 4-1-160) as it exists or may be amended. All other obligations under this Agreement shall remain in effect until each of the following conditions have been satisfied:

1. The City or the District provides written notice that this Agreement is being terminated;
2. The District no longer retains any unexpended or unencumbered SIF and/or interest earned thereon;
3. The requirements of RCW 82.02.080 (Impact Fees – Refund) are satisfied.

The obligations under section IV (Indemnification) shall be continuing and shall not be diminished or extinguished by the termination of this Agreement until each of the conditions of this subsection are satisfied.

B. 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.

VII. MODIFICATION

Changes or modifications of this Agreement shall only be valid or binding upon either party if such changes or modifications are in writing and executed by both parties.

VIII. INTEGRATION

This Agreement, together with the SIF 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.

IX. 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.

X. RIGHTS OF OTHER PARTIES

It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and neither conveys nor creates any third-party rights or interest.

XI. 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.

XII. 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;

B. Execution of the Agreement by the duly authorized representative(s) of each of the parties;

- C. The filing of a copy of this Agreement with the following public officials:
1. The City Clerk of the City of Renton;
 2. The Secretary of the Board of Directors of the Issaquah School District; and
 3. The King County Records and Elections Division.

XIII. ADMINISTRATION

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

XIV. 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 RENTON:

ISSAQUAH SCHOOL DISTRICT:

By: _____
 Its _____

By: _____
 Its _____

APPROVED AS TO FORM
 OFFICE OF THE CITY ATTORNEY

APPROVED AS TO FORM
 SCHOOL DISTRICT ATTORNEY

ATTEST/AUTHENTICATED:

 CITY CLERK, BONNIE WALTON

STATE OF WASHINGTON)

COUNTY OF KING

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I certify that I know or have satisfactory evidence that _____
_____ is/are the person(s) 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 _____
_____ of the City of Renton to be the free and
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

NOTARY PUBLIC in and for the
State of Washington,
Residing at: _____
My commission expires: _____

(Print Name)