

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

THIS AGREEMENT is entered into this ____ day of _____, 2001, by and between the City of Arlington ("City") and the Arlington School District No.16 ("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 District has prepared a capital facilities plan in compliance with the Act which has been adopted by the City of Arlington as a sub-element of the capital facilities element of the City of Arlington Comprehensive Plan by Ordinance No. 1263; and

WHEREAS, the City of Arlington has adopted Ordinance No. 1263 for the assessment and collection of school impact fees upon certain new residential developments on behalf of the District; and

WHEREAS, the City of Arlington 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 of Arlington ("City") and the Arlington School District No. 16 ("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. Bi-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 Ordinance No. 1263 on or before April 1 of each year.

- B. On behalf of the City, collect impact fees from developers under School Impact Fee Ordinance and this Agreement.
- C. Authorize Snohomish County, as Treasurer for the District, to establish a School Impact Fee Account into which school impact fees may be deposited;
- D. Deposit within twenty-eight (28) days all impact fees collected under the School Impact Fee Ordinance in the School Impact Fee Account in the Office of the Snohomish County Treasurer.
- E. Expend impact fee revenues provided to the District under this Agreement, and all interest proceeds on such revenues, for expenditures authorized by Section 11 of Ordinance No. 1263.
- F. Prepare an annual report in accordance with the requirements of RCW 82.02.070 and Section 18A.11.020 (Use of Funds) of Ordinance No. 1263 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 December 1 of each year for the preceding calendar year.
- G. Issue certificates to developers indicating payment of school impact fees under the School Impact Fee Ordinance.
- I. Refund impact fees and interest earned on impact fees in accordance with 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 fees program is terminated.
- J. Maintain all accounts and records necessary to ensure proper accounting for all impact fee funds and compliance with this Agreement, the Act, and Ordinance No. 1263.
- K. Review and approve as to form all covenants and declarations of restrictions required to maintain exemptions from payment of impact fees.

III. RESPONSIBILITIES OF THE CITY:

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

- A. Timely review and adopt an updated Capital Facilities Plan and a revised impact fee schedule, based upon the District's updated plan and schedule, as a part of the adoption of the City's updated Comprehensive Plan.

- B. Notify applicants of the requirement to pay school impact fees based on the fee schedule adopted by the City pursuant to the School Impact Fee Ordinance.
- C. Enforce the School Impact Fee Ordinance, or covenants of declarations and restrictions, where the same have been executed as a condition of exemption from school impact fees. The City shall not issue any development permit without first requiring applicants to submit a certificate evidencing that school impact fees have been paid to the District.
- D. After receipt of the District's annual report required by Section II(D) above, prepare an annual report on each impact fee account, showing the source and amount of all monies collected, earned, or received and the system improvements that were financed in whole or in part by impact fees, as required by RCW 82.02.070(1).

IV. GENERAL TERMS:

- A. This Agreement shall become effective on January 1, 2002, 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 the City is vested with the authority to impose and to collect school impact fees and that the District, on behalf of the City, will collect such fees from applicants.

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 the City or appropriate state agency, except legally privileged documents or documents that are exempt from disclosure under the Public Records 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 appropriate state agencies, and/or any of their authorize 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 the matters covered by this Agreement. The City and/or any of its authorized 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. The City will give fifteen (15) days advance written notice to the District of fiscal audits to be conducted and the name(s) of the authorized employees, agents, or

representatives.

- 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 costs 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 or compliance with the terms of Ordinance No. 1263, all as may be amended from time to time.
- B. The District further agrees that the District shall, at its own costs 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, 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.
- 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 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 or the terms of Ordinance No. 1263, all as may 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.
- 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 by the City

at any time, but only upon the repeal of Ordinance No. 1263. 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 VI of this Agreement shall be continuing and shall not be diminished or extinguished by the termination of this Agreement.

- B. The District shall, upon the repeal of the School Impact Fee Ordinance and/or the termination of this Agreement, either properly expend or refund any remaining unexpended or unencumbered impact fees and interest earned thereon 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 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. 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.

X. 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 Secretary of the Board of Directors of District No. 16, the City of Arlington, Snohomish County, the Secretary of State, and the Washington Department of Community Development.