

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF MERCER ISLAND AND
THE MERCER ISLAND SCHOOL DISTRICT FOR THE
COLLECTION, DISTRIBUTION, AND EXPENDITURE
OF SCHOOL IMPACT FEES**

THIS AGREEMENT is entered into this 24th day of September, 2015, by and between the City of Mercer Island (the "City") and the Mercer Island School District No. 400 (the "District").

WHEREAS, the Washington State Legislature passed the Growth Management Act, 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 be collected for public facilities which are addressed by a capital facilities element of a comprehensive plan; and

WHEREAS, the City has adopted Ordinance No. 15C-15 for the purpose of implementing the Act; and

WHEREAS, the District has prepared a capital facilities plan in compliance with the Act and the plan has been adopted by reference in the City's Comprehensive Plan; and

WHEREAS, upon the effective date of Ordinance No. 15C-15, the City will collect impact fees upon certain new residential development activity 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; and

WHEREAS, the City and the District have constructively worked together to collect impact fees to improve public education in the City of Mercer Island and look forward to implementing this Agreement in order to clarify the roles and responsibilities of both parties to provide for an efficient and effective school impact fee collection process;

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

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

- 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 Ordinance No. 15C-15 as now adopted or hereafter amended on or before July 1 of each year.
- B. Establish a District Impact Fee Account as required by RCW 82.02.070 in which impact fee revenues and interest revenues will be recorded.
- C. Authorize the City to collect impact fees for the District and remit the impact fees to the District promptly in accordance with this Agreement.
- D. 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.
- E. Expend impact fee revenues provided to the District under this Agreement, and all interest proceeds on such revenues, solely for expenditures as authorized by Ordinance No. 15C-15 as now adopted or hereafter amended related to facilities identified in the District's Capital Facilities Plan.
- F. Prepare an annual report in accordance with the requirements of RCW 82.02.070 and Ordinance No. 15C-15 as now adopted or hereafter amended showing the amount of all monies collected, earned, or received, and 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 sent to the City on or before April 1 each year for the prior year.
- G. Notify property owners of refunds under RCW 82.02.080 and refund impact fees and interest earned on impact fees disbursed to the District whenever required to do so by 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.
- H. 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. 15C-15 as now adopted or hereafter amended.
- I. Comply with the State Environmental Policy Act, Chapter 43.21C RCW.

III. RESPONSIBILITIES OF THE CITY OF MERCER ISLAND

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

- A. Timely review and take action on the District's updated Capital Facilities Plan and the District's revised impact fee schedule.
- B. Amend, update and maintain the City's Comprehensive Plan and development regulations and Ordinance 15C-15 at all times as necessary in order to permit the District to continue collecting school impact fees.
- C. Administer, pursuant to Ordinance No. 15C-15 as now adopted or hereafter amended, the assessment and collection of school impact fees.
- D. Deposit all impact fees collected on behalf of the District into a separate account and transmit such monies, and any interest earned thereon, to the District within thirty (30) days of actual receipt of the funds. As used in this Section, "actual receipt" means that date upon which any check or other negotiable instrument is actually paid and the funds are credited to the City's account without further recourse.
- E. Determine whether applicants are excluded from the application of the impact fee pursuant to Section 19.17.090 (Exemptions) of the Mercer Island City Code. Review all covenants and declarations of restriction for form, as these documents are required to or maintain exemptions from payment of impact fees, and provide the District with written decisions regarding the same.
- F. Review any request for an administrative adjustment of fees and, in consultation with the District, determine the adjusted fee amount, if any, and provide the District with written decisions regarding the same. Notwithstanding the foregoing, the District shall be responsible for recommending whether an adjustment to impact fees is appropriate under MICC 19.100(E)(2) and the City shall be entitled to rely on that recommendation.
- G. Review any request for an in-kind contribution and, in consultation with the District, determine the associated credit against school impact fees otherwise due, if any, and provide the District with documentation and a written decision regarding the same.
- H. Prepare an annual report, as required by RCW 82.02.070(1), utilizing and relying upon the report prepared by the District under II(F) above. The City's report will contain information on 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, but the City shall only be responsible for independently preparing that portion of the report which details the source and amount of monies collected by

the City and the amount distributed to the District, and all other portions of the report shall simply incorporate the information provided by the District and provide the District with a copy of the report no later than October 31 each year for the prior year.

IV. GENERAL TERMS

- A. This Agreement shall be effective when executed by both parties and shall remain in effect until terminated in writing by both parties.
- B. It is recognized that amendments to this Agreement may become necessary, and such amendments 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 collect school impact fees. The parties agree 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. The parties also acknowledge that the City is entitled to collect an administrative fee sufficient to reimburse its costs related to the administration of the school impact fee program. This fee shall be in addition to the actual impact fee collected per dwelling unit.

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.
- 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 during normal business hours, all of the District's records with respect to all matters covered by this Agreement; provided, that access to and examination of legally privileged documents or documents that are exempt from disclosure under the Public Records Act shall be given only where the same is necessary to complete the state audit required for the City or to defend appeals or challenges to this Agreement or the School Impact Fee Ordinance. 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, materials, payrolls, and record of matters covered by this Agreement. The District shall retain these records and make them available for review or audit by the City for a period not less than six (6) years, and for longer periods when necessary for audit purposes of legal matters. The City will give at least fifteen (15) days advance notice to the District of fiscal audits to be conducted.

- C. The results and records of said audit shall be maintained for a period not less than six (6) years, and for longer periods when necessary for audit purposes of legal matters, and disclosed in accordance with Chapter 42.17 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 representatives) negligent acts or omissions; intentional acts or omissions; any liability arising from an audit of the District's impact fee account; any liability arising from a defect in the calculated school impact fee or the cost bases, formula or discount used to determine the school impact fee; or failure for any reason to comply with the terms of this Agreement, the terms of the Act, or the terms of the Mercer Island City Code as now adopted or hereafter amended, all as may be amended from time to time.
- B. 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, including but not limited to, a determination that impact fees from the 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.
- 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. Except as provided in paragraphs A, B, and C above, the City shall, at its own cost and expense, protect, defend, indemnify and hold harmless the District, its officers, employees, or agents, from that portion of any and all costs, claims, judgments or awards of damages that exceed the amount of impact fees attributable to the activity (if such deduction is allowed by law) out of which the liability arises that the City has collected on behalf of the District resulting from the City's (by its officers, employees, agents, or representatives) 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 Mercer Island City Code as now adopted or

hereafter amended, all as may be amended from time to time, and relating to the City's implementation of the school impact fee program or performance of the duties set forth in Section III of this Agreement; 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. It is the intent of this Section VI(D) that any liability created by the City's performance of its duties identified under this Section be satisfied first out of any impact fees attributable to the activity (if such deduction is allowed by law) out of which the liability arises that have been collected by the City on 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 are insufficient (or cannot be legally collected), 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 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 City nor the District retains unexpended or unencumbered impact fees or 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 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. 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 District's Board of Directors and with the City Clerk for the City.

XI. ADMINISTRATION

Any notices required by this Agreement shall be provided in writing to the parties identified as follows:

A. The City's representative shall be:

City Manager

Address: Mercer Island City Hall
9611 SE 36th Street
Mercer Island, WA 98040

Phone: (206) 275-7660

B. The District's representative shall be:

Chief Finance/Operations Officer

Address: Mercer Island School District No. 400
4160 86th Ave SE
Mercer Island, WA 98040

Phone: (206) 236-3330

XII. 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 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

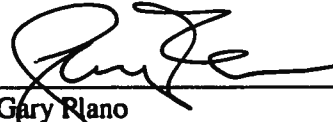
Agreement unless stated to be such through written approval by the parties, which shall be attached to the original Agreement.

THE CITY OF MERCER ISLAND,
WASHINGTON

MERCER ISLAND SCHOOL DISTRICT NO.
400



Noel Treat
City Manager



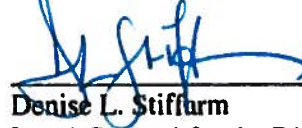
Dr. Gary Plano
Superintendent

APPROVED AS TO FORM:



Kari Sand
City Attorney

APPROVED AS TO FORM:



Denise L. Stiffarm
Legal Counsel for the District