



CONTRACTS & AGREEMENTS

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Description: INTERLOCAL AGREEMENT FOR COLLECTION, DISTRIBUTION,
AND EXPENDITURE OF SCHOOL IMPACT FEES

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INTERLOCAL AGREEMENTS
12/31/2009
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RES 8833

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

THIS AGREEMENT is entered into this ___ day of _____, 2014 by and between the City of Bellevue, a Washington municipal corporation (the "City") and the Renton School District No. 403, a Washington municipal corporation (the "District"). The District and the City are sometimes referred to together as the "Parties" and each individually as a "Party".

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 elements 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 as a subelement of the capital facilities element of the City Comprehensive Plan by Resolution No. 5903; and

WHEREAS, the City has adopted Ordinance No. 6194 providing for the assessment and collection of school impact fees upon certain new residential developments on behalf of the District (the "Ordinance"); 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 purpose of collecting and distributing the authorized impact fees.

NOW KNOWINGLY AND VOLUNTARILY ENTERING INTO THIS AGREEMENT, IT IS THE INTENTION OF THE PARTIES TO THE AGREEMENT THAT THE AGREEMENT IS THE CONSIDERATION OF THE MUTUAL PROMISES

RES 8833

I. GENERAL

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 elected officials, employees, agents and representatives, agrees to:

- A. Annually submit to the City (a) a six-year capital facilities plan or an update of a previously adopted plan, which meets the requirements of the Act and Chapter 22.18 BCC on or before December 1st of each year,

including an impact fee schedule, and (b) any other information required by the Act or the Ordinance.

- B. Authorize King County, as Treasurer for the District, to establish a School Impact Fee Account into which school impact fees shall be deposited.
- C. Expend impact fee revenues provided to the District under this Agreement, and all interest proceeds on such revenues, in accordance with the Act and the Ordinance.
- D. Prepare an annual report in accordance with the requirements of RCW 82.02.070(1) and the Ordinance showing the source and amount of all moneys provided by the City to the District and system improvements that were financed in whole or in part by impact fees. The annual report shall be sent to the Director of the Development Services Department of the City on or before December 1st of each year for the previous Reporting Year. A "Reporting Year" shall be the period between December 1 of one calendar year and November 30 of the next calendar year.
- E. 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.
- F. Maintain all accounts and records necessary to ensure proper accounting for all impact fee funds and compliance with this Agreement, the Act, and Chapter 22.18 BCC.

III. RESPONSIBILITIES OF THE CITY:

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

- A. Timely review and adopt the District's updated Capital Facilities Plan and the District's revised impact fee schedule.
- B. Calculate the amount of school impact fees due in connection with any non-exempt residential development in the City, based upon the impact fee schedule adopted by the City pursuant to the Ordinance and consistent with applicable law.
- C. Collect school impact fees from developers of non-exempt residential development in the City in accordance with City ordinance. The City will endeavor to collect such fees in all cases in which fees are due, but shall not be liable to the District for unintentional failure to collect any such fees.

- D. Deposit within fourteen (14) days all impact fees collected on behalf of the District in the School Impact Fee Account in the Office of the King County Treasurer. No interest shall accrue during this 14-day period.
- E. 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 moneys collected, earned, or received and system improvements that were financed in whole or part by impact fees, in compliance with RCW 82.02.070(1) and other applicable law.
- F. Determine whether applicants are excluded from the application of the impact fee pursuant to BCC 22.18.060, as may be amended from time to time, and whether residential development activity is exempt from the payment of fees under the Act or other applicable law.
- G. Promptly forward to the District any request for a refund of school impact fees received by the City.

IV. GENERAL TERMS:

- A. This Agreement shall become effective when executed by both Parties and filed within the Secretary of State and with King County, and shall remain in effect until terminated pursuant to Section VII of this Agreement.
- B. It is recognized that amendments of this Agreement may become necessary, and such amendments shall become effective only if in writing and executed by both Parties.
- C. The Parties acknowledge that the City is vested with the authority to impose and to collect school impact fees. The Parties agree that the City shall in no event be liable to the District for the payment of money in connection with the school impact fee program, with the exception of remitting to the District the impact fees collected for the District and interest earned thereon.

V. AUDIT:

- A. A Party's records and documents with respect to all matters covered by this Agreement shall be subject to inspection, review, or audit by the other Party.
- B. The Parties agree to cooperate with any monitoring or evaluation activities conducted by the City that pertain to the subject of this Agreement. Each Party agrees to allow the other Party, or appropriate state agencies, and/or any of their authorized employees, agents, or representatives, to have full access to and the right to examine during normal business hours, all of such Party's records with respect to the matters covered by the Agreement. The Parties and/or any of their authorized employees,

agents, or representative 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. A Party will give fifteen (15) days advance written notice to the other Party of fiscal audits to be conducted and the name(s) of the authorized employees, agents, or representatives that will conduct the audit.

- 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 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 or the District's compliance with the terms of Chapter 22.18 BCC, all as may be amended from time to time.
- 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 Chapter 22.18 BCC or resulting from any claim for compensation under Initiative 164; 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, or 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 when a refund is required by applicable law, 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 VII.

- E. The City shall, at its own cost and expense, protect, defend, indemnify, and hold harmless the City, its officers, or 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 Chapter 22.18 BCC, 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.

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. DURATION; TERMINATION:

- A. This Agreement shall be effective immediately upon: (a) execution by the City and the District and (b) approval of this Agreement by official action of the governing bodies of each of the Parties.
- B. 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. _____. 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 District, nor the City on behalf of the District, retain 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.
- C. The City shall ensure that upon termination of this Agreement, any remaining unexpended or unencumbered impact fees and interest earned thereon are refunded pursuant to RCW 82.02.080. The District shall cooperate with such effort.
- D. 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, conditions, 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 Renton School District No. 403, the City of Bellevue, King County, the Secretary of State, and the Washington Department of Community Development.

XI. ADMINISTRATION:

A. The City's representative shall be:

Director of the Development Services Department
City of Bellevue
P.O. Box 90012
Bellevue, Washington 98009-9012

Telephone: (425) 452-4113

B. The District's representative shall be:

Assistant Superintendent
Renton School District No. 403
300 SW 7th Street
Renton, Washington 98057

Telephone: (425) 204-2361

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 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.

CITY OF BELLEVUE, a Washington
municipal corporation

RENTON SCHOOL DISTRICT NO. 403,
a Washington municipal corporation

By: Brad Miyake
Its: City Manager

By: Merri Rieger
Its: Assistant Superintendent, Finance
and Operations

APPROVED AS TO FORM:

By: Lori Riordan
Its: Deputy City Attorney

By: Lynn Desmarais
Its: President of the Board of Directors

ORIGINAL

3105-RES
11/13/2014

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 8833

A RESOLUTION authorizing execution of an Interlocal Agreement for the Collection, Distribution, and Expenditure of School Impact Fees between the City of Bellevue and Renton School District No. 403.

WHEREAS, under RCW Chapter 82.02 the City is authorized to impose impact fees on development activities as part of the financing for public facilities, including school facilities; and

WHEREAS, the City adopted Ordinance No. 6194 on November 17, 2014 amending Chapter 22.18 of the Bellevue City Code, providing for the collection, distribution, and expenditure of school impact fees for the Renton School District No. 403 in accordance with RCW Chapter 82.02; and

WHEREAS, the City of Bellevue and the Renton School District desire to provide by Interlocal Agreement for the collection, distribution, and expenditure of school impact fees on behalf of and for the benefit of the Renton School District No. 403; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Manager is hereby authorized to execute that certain Interlocal Agreement for the Collection, Distribution, and Expenditure of School Impact Fees with Renton School District No. 403, a copy of which has been given Clerk's Receiving No. 52970.

Passed by the City Council this 17th day of November, 2014, and signed in authentication of its passage this 17th day of November, 2014.

(SEAL)



Claudia Balducci, Mayor

Attest:

Myrna L. Basich
Myrna L. Basich, City Clerk