

AN AGREEMENT RELATED TO SNOHOMISH COUNTY'S
SCHOOL IMPACT FEE PROGRAM

THIS AGREEMENT is entered into this 6th day of March, 2013 by and between Snohomish County (the "County") and the Lakewood School District (the "District").

WHEREAS, the Washington State Legislature passed the Growth Management Act of 1990 (the "GMA"), chapter 36.70A RCW, and chapter 82.02 RCW (together, the "Authorizing Statutes") authorizing the collection of school impact fees on development activity to provide public school facilities to serve new development; and

WHEREAS, the Authorizing Statutes require that impact fees only be collected for public facilities which are addressed by a capital facilities element of a comprehensive land use plan; and

WHEREAS, the County has adopted chapter 30.66C Snohomish County Code (SCC) regarding school impact fees for the purposes of implementing the Authorizing Statutes; and

WHEREAS, the parties previously entered into an agreement dated July 26, 1999 (the "Previous Agreement") for the collection, distribution, and expenditure of school impact fees; and

WHEREAS, the parties intend to enter into this agreement (the "Agreement") pursuant to state law for the collection, distribution, and expenditure of school impact fees and intend for this Agreement to replace and supersede the Previous Agreement; and

WHEREAS, a school district participating in the impact fee program must prepare a capital facilities plan in compliance with the GMA and chapter 30.66C SCC; and

WHEREAS, the District has prepared and will adopt a capital facilities plan once reviewed by County staff; and

WHEREAS, collection and expenditure of school impact fees is contingent upon the County's adoption of the District's capital facilities plan as a sub-element of the capital facilities element of the County's GMA Comprehensive Plan (the "GMACP"); and

WHEREAS, the County and the District intend to enter into this Agreement under the authority of SCC 30.66C.050 and 30.66C.230 for the purposes of reviewing the District's capital facilities plan and for the collection and distribution of school impact fees; and

WHEREAS, this Agreement will set forth the duties and responsibilities with regard to the implementation of the school impact fee program, as well as indemnification responsibilities in the event of any legal challenges to the program;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN, IT IS AGREED THAT:

I. GENERAL AGREEMENT

The County and the District agree to comply with the terms of this Agreement which govern the collection, distribution and expenditure of school impact fees. This Agreement shall replace and supersede the Previous Agreement.

II. GENERAL TERMS

- A. This Agreement shall become effective when executed by both parties and shall remain in effect for six years or until terminated pursuant to Section IX of this Agreement.
- B. The parties recognize that amendments to this Agreement may become necessary and that any such amendments shall become effective only when the parties have executed a written addendum to this Agreement.
- C. The parties acknowledge that the County has the authority to impose, collect, and distribute school impact fees under chapter 30.66C SCC and the Authorizing Statutes. The parties agree that the County 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 school impact fees, together with any accrued interest as required by law, collected by the County on behalf of the District.

III. RESPONSIBILITIES OF THE DISTRICT

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

- A. Biennially provide to the County for review a six-year capital facilities plan (the "Capital Facilities Plan") meeting the requirements of SCC 30.66C.040.
- B. Pay to the County an hourly fee established in Appendix A for the County's required review of the Capital Facilities Plan under SCC 30.66C.050.
- C. Adopt the Capital Facilities Plan prior to the Snohomish County Council's public hearing where the Snohomish County Council considers and

adopts the Capital Facilities Plan as a sub-element of the capital facilities element of the GMACP.

- D. Expend school impact fees, and any earned interest, solely for expenditures authorized by SCC 30.66C.210 related to facilities identified in the Capital Facilities Plan as adopted by the County as a sub-element of the capital facilities element of the GMACP.
- E. Refund school impact fees disbursed to the District when the school impact fees and interest earned on impact fees are not expended or encumbered within the time limits established by state law. Impact fees and accrued interest shall be refunded to the current owner of the property after consultation with the County. Please see section IV.E for those circumstances in which the County is responsible for providing the refund.
- F. Prepare and submit to the County on or before April 1 each year an annual report in accordance with the requirements of SCC 30.66C.210(4) for the preceding calendar year allowing the County to meet the requirements of RCW 82.02.070(1). The District's annual report shall identify the system improvements that were financed in whole or in part by school impact fees and the amount of funds expended on those system improvements.
- G. Authorize the County Treasurer, as Treasurer for the District, to maintain a separate District fund (the "Agency Fund") into which school impact fees shall be deposited.
- H. Notify the Department of Planning and Development Services' ("PDS") Director in writing, at least five (5) days before refunding, in whole or in part, any impact fee. The District shall be responsible for verifying proof of current property ownership in those limited circumstances identified in section III.E above where it is the party responsible for providing the refund.
- I. Provide the District's position in writing regarding a requested adjustment under SCC 30.66C.300 or an appeal pursuant to SCC 30.66C.310. The District's position shall be provided in a timely manner to the PDS Director and shall clearly state the District's position regarding the requested adjustment or appeal. Nothing herein supersedes the authority and discretion vested by the Snohomish County Code with the PDS Director and/or the Snohomish County Hearing Examiner.
- J. Maintain all accounts and records that are necessary to ensure proper accounting for the Agency Fund as required by law. This District responsibility shall survive termination of this Agreement.

- K. Pay to the County an administrative transaction fee for each dwelling unit on which a school impact fee is collected as set forth in Appendix A for administrative costs of assessing, collecting, and handling the impact fees for the District. The payment is partial reimbursement for County administrative costs in the operation of the school impact fee program.
- L. Comply with the State Environmental Policy Act, chapter 43.21C RCW.

IV. RESPONSIBILITIES OF THE COUNTY

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

- A. Timely review and act on the Capital Facilities Plan under SCC 30.66C.050 and .055, together with any subsequent updates, and revise impact fee schedule for the District when so required.
- B. Collect school impact fees for new development as authorized by chapter 30.66C SCC before the issuance of building permits.
- C. Deposit all school impact fees into the Agency Fund as required by RCW 82.02.070 and SCC 30.66C.200(2), as those provisions exist or may hereafter be amended. The County shall deposit school impact fees into the Agency Fund within ten (10) days after receipt and shall provide the District with a notice of deposit.
- D. Provide monthly reports to the District on the development permits and amount of school impact fees collected for each development permit and the interest attributed to the District.
- E. Refund school impact fees when: (1) impact fees are collected in error by the County or; (2) a proposed development activity does not proceed and no impact to the District has resulted; or (3) the school impact fee program is terminated. Those impact fees shall be refunded to the current property owner with any interest that has accrued, after consultation with the District. The County shall be responsible for verifying proof of current property ownership when it is the party providing the refund.
- F. Attempt to collect school impact fees by any process allowed by title 30 SCC if the County erroneously failed to collect school impact fees as required by SCC 30.66C.200. If the County is unsuccessful in collecting such school impact fees, the County shall notify the District and the District shall be responsible for initiating further collection actions; provided that, as necessary, the County shall provide the District with all information related to the development for which the fee was not collected and the County's subsequent efforts to collect the fee.

- G. Prepare an annual report upon receipt of the District's annual report, showing the source and amount of all school impact fees collected and the amount of funds expended as reported by the District pursuant to Section III.F of this Agreement, RCW 82.02.070, and SCC 30.66C.210.
- H. Request the District's written position regarding a requested adjustment under SCC 30.66C.300 or appeals pursuant to SCC 30.66C.310. Nothing herein supersedes the authority and discretion vested with the PDS Director and/or Snohomish County Hearing Examiner.
- I. Determine, on a case-by-case basis, whether to grant an exemption to the application of the impact fee schedule for low-income housing, as defined in chapter 30.91 SCC, under RCW 82.02.060 and SCC 30.66C.110 as currently adopted or hereafter amended.
- J. Assist the District in determining student generation factors of new developments and/or document demographic similarities between the County school districts.

V. FEE SCHEDULE AND CREDIT CARD FEES

- A. The District and County shall review Appendix A, the Fee Schedule, at least once every two years and amend if necessary.
- B. Appendix A is incorporated by reference into this Agreement.
- C. The District agrees to remit payment of credit card/bank transfer fees incurred by the County that result from applicants paying school impact fees with credit/debit cards.

VI. AUDIT

- A. The District agrees to cooperate with any monitoring or evaluation activities conducted by the County that pertain to the subject of this Agreement. The District agrees to allow the County, 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 for the previous ten years with respect to all matters covered by this Agreement. The County and/or any of its employees, agents, or representatives shall be permitted to audit, examine, and excerpt from or transcribe such records and to audit all invoices, materials, payrolls, and record of matters covered by this Agreement, except documents that are exempt from disclosure under the Public Records Act, chapter 42.56 RCW. The County will give fifteen days advance notice to the District of fiscal audits to be conducted.

- B. The results and records of said audit shall be maintained and disclosed in accordance with the Public Records Act.

VII. HOLD HARMLESS

Each party shall defend, protect and hold harmless the other party from and against all claims, suits or actions arising from any intentional or negligent act or omission of that party's employees, agents and/or authorized subcontractor(s) while performing under the terms of this agreement.

This section shall survive termination of this Agreement.

VIII. EXERCISE OF RIGHTS OR REMEDIES

Failure of either party to exercise any rights or remedies under this Agreement shall not be a waiver of any obligation by either party and shall not prevent either party from pursuing the right or remedy at any future time. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of terms of the Agreement unless stated to be such through written approval by the County and the District, which shall be attached to the original Agreement.

IX. TERMINATION

- A. This Agreement shall remain in effect for six years from the date execution by both parties unless either of the following occur: (1) The County or the District provides written notice that this Agreement is terminated or (2) chapter 30.66C SCC is rescinded or amended to relieve the County's obligation to collect school impact fees. Neither the District nor the County on behalf of the District may retain unexpended or unencumbered school impact fees and interest earned on those fees.
- B. Termination shall be effective ten (10) days after either the conditions, in Section IX.A above, occur. The obligations under Section VII of this Agreement shall be continuing and shall not be diminished or extinguished by the termination of this Agreement.
- 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.

X. 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.

XI. RIGHTS TO OTHER PARTIES

The parties understand and agree that this Agreement is solely for the benefit of the parties hereto and conveys no right to any other party.

XII. GOVERNING LAW, VENUE, AND FILING

This Agreement shall be construed and enforced in accordance with, and with validity and performance hereof, shall be governed by, the laws of the State of Washington. Any lawsuit regarding this Agreement must be brought in the Superior Court of Snohomish County Washington. This Agreement shall be filed with the clerk of the district, the Snohomish County Records and Election Division, the Secretary of State and the Washington Department of Commerce.

XIII. ADMINISTRATION AND NOTIFICATIONS

Any written notification required under this Agreement shall be provided as follows:

If to the County:

Director of Planning and Development Services

Address:

Phone:

If to the District:
Address:

PO Box 220
N Lakewood, WA 98259

Phone:

360-652-4500

XIV. ENTIRE AGREEMENT

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.

XV. NEGOTIATION AND CONSTRUCTION

This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the Parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either Party.

SNOHOMISH COUNTY, WASHINGTON

Lakewood SCHOOL DISTRICT

By: _____
Aaron Reardon
Snohomish County Executive
Date: _____

By: [Signature]
Dr. Dennis Huddock
School District Superintendent
Date: March 6, 2013

APPROVED AS TO FORM ONLY:

[Signature]
Deputy Prosecuting Attorney
Date: 1/30/13

APPROVED AS TO FORM ONLY:

[Signature]
Attorney Legal Counsel
Date: 2/11/13

APPENDIX A

FEE SCHEDULE

County Staff Capital Facility Plan Review Fee (Per Hour)*		
Year 2012	Year 2013	Year 2014
\$88.00	\$88.00	\$88.00

*This fee is associated with the County technical review committee's review of the District's Capital Facilities Plan under SCC 30.66C.050 and should not exceed \$200.00 unless mutually agreed to in writing by the County and the District due to special circumstances requiring extraordinary County staff time for review of the District's Capital Facility Plan,

Administrative Transaction Fee (Per Dwelling Unit)**		
Year 2012	Year 2013	Year 2014
\$44.00	\$44.00	\$44.00

**These administrative transaction fees are provided for in SCC 30.66C.230 and are based upon the number of dwelling units being constructed. For example, the administrative transaction fee in 2012 for a proposed 10 dwelling unit multi-family structure requiring a single building permit would be \$440.00.