

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

THIS AGREEMENT is entered into this 6th day of April, 1993 by and between the City of Carnation (the "City") and the Riverview School District No. 407 (the "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 Carnation as a subelement of the City of Carnation Comprehensive Plan by Ordinance No. 474; and

WHEREAS, the City of Carnation has adopted Chapter 15.20 of the Carnation Municipal Code for the assessment and collection of school impact fees upon certain new residential developments on behalf of the District; and

WHEREAS, the City of Carnation 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 Carnation (the "City") and the Riverview School District No. 407 (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 C.M.C. Chapter 15.20 on or before April 1st of each year.
- B. Authorize King County, as Treasurer for the District, to establish a School Impact Fee Account into which school impact fees may be deposited.
- C. Expend impact fee revenues provided to the District under this Agreement, and all interest proceeds on such revenues, for expenditures authorized by C.M.C. Section 15.20.080.
- D. Prepare an annual report in accordance with the requirements of RCW 82.02.070 and C.M.C. Section 15.20.100(C) 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 April 1st of each year for the preceding 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 C.M.C. Chapter 15.20.

III. RESPONSIBILITIES OF THE CITY:

The City, 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. Deposit promptly all impact fees collected on behalf of the District and interest earned thereon in the School Impact Fee Account in the Office of the King County Treasurer.

- C. 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 in part by impact fees, as required by RCW 82.02.070(1).
- D. Determine whether applicants are excluded from the application of the impact fee pursuant to C.M.C. Section 15.20.060, as may be amended from time to time.

IV. GENERAL TERMS:

- A. This Agreement shall become effective when executed by both parties and filed with 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 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 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. 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. 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 City will give 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 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 City's school impact fee program.
- 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 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 that portion of any costs, claims, judgments, or awards of damages that exceeds the amount of impact fees the City has collected for a particular development activity on behalf of the District resulting from the City's (by its officers, employees, agents, or representatives) failure to perform its duties under this Agreement or under the terms of C.M.C. Chapter 15.20, 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.

It is the intent of this Section (VI D) that any liability created by the City's performance of its duties under this Agreement or the terms of C.M.C. Chapter 15.20 be satisfied first out of any impact fees attributable to the activity 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 at issue are insufficient, 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 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.
- B. The City, as the official fiscal agent, shall have the authority to 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.
- 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. 407, the City Clerk of the City of Carnation, the King County Records and Elections Division, the Secretary of State, and the Washington Department of Community Development.

XI. ADMINISTRATION:

A. The City's representative shall be:

John Sevy
City Administrator
4621 Tolt Avenue
P.O. 267
Carnation, Washington 98014

Telephone: (206) 333-4192

B. The District's representative shall be:

Cherie Alderson
Director of Operations
Riverview School District No. 407
32240 N.E. 50th Street
Carnation, Washington 98014-6332

Telephone: (206) 788-0285

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 City, which shall be attached to the original Agreement.

CITY OF CARNATION, WASHINGTON

RIVERVIEW SCHOOL DISTRICT
NO. 407



Michael Plant
Mayor
City of Carnation



Rick Scheuer
President
Board of Directors

APPROVED AS TO FORM



Dominick Driano
City Attorney



J. Clifton Ernst
Superintendent

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