

INTERLOCAL AGREEMENT  
BY AND BETWEEN  
THE CITY OF EDGEWOOD, WASHINGTON  
AND  
THE PUYALLUP SCHOOL DISTRICT

**ORIGINAL**

**THIS AGREEMENT** is entered into this 22 day of November, 2004, by and between the City of Edgewood (hereinafter "City") and the Puyallup School District (hereinafter "District").

**WHEREAS**, the Washington State Legislature passed the Growth Management Act, Chapter 36.70A RCW, and Chapter 82.02 RCW (hereinafter "Act"), which authorizes the imposition of impact fees on development activity as part of the financing for public facilities, which financing must provide for a balance between impact fees and other sources of public funds; and

**WHEREAS**, the Act permits the collection and expenditure of impact fees only for public facilities which are addressed by a capital facilities element of a comprehensive land use plan adopted under the Act; and

**WHEREAS**, the District has prepared a capital facilities plan, and authorization to collect and expend fees is contingent upon the City adopting the District's Capital Facilities Plan as part of the City's Comprehensive Plan, all as required by RCW 36.70A.070, and on the Plan's adherence with the statutory requirements of the Act; and

**WHEREAS**, the City has adopted Ordinance No. 02-0187 and No. 04-0231, which describes the features of the school impact fee program and allows the District to receive and expend school impact fees in conformance with the Act and the City has adopted by reference the District's Capital Facilities Plan as part of the City's Comprehensive Plan; and

**WHEREAS**, the City and the District have entered into this Interlocal Agreement pursuant to Chapter 39.34 RCW, for the purposes of setting forth the duties and responsibilities of the parties with regard to the school impact fee program;

**NOW, THEREFORE**, in consideration of the mutual promises herein, the parties agree as follows:

**I. RESPONSIBILITIES OF THE DISTRICT**

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

A. On or before April 1st of each calendar year, submit to the City a six (6) year capital facilities plan or an update of the previously adopted plan together with an impact fee schedule which meets the requirements of the Act and the school impact fee ordinance. In addition, the District shall submit all other information required by Section 7(a) of the school impact fee ordinance.

B. On behalf of the City, collect impact fees from developers under the school impact fee ordinance and this Agreement.

C. Issue certificates to developers indicating payment of school impact fees under the school impact fee ordinance.

D. Establish and maintain impact fee accounts as required by RCW 82.02.070.

E. Properly expend and account for impact fees as required in RCW 82.02.050(4) and 82.02.070(2).

F. Prepare and submit to the City on or before April 1 of each calendar year a report showing the source and amount of all moneys collected, earned, or received, and all system improvements that were financed in whole or in part by impact fees during the preceding calendar year, together with all information necessary to allow the City to meet all of the requirements of RCW 82.02.070(1).

G. Encumber and expend impact fees only as provided in RCW 82.02.070(3), and where the District has extraordinary and compelling reasons for noncompliance with this statute, the District shall identify such reasons in written findings to the City Council.

H. On behalf of the City, notify property owners of refunds under RCW 82.02.080.

I. Make timely payments of refunds due under RCW 82.02.080, together with any interest which may be due thereon.

J. Review and approve as to form all covenants and declarations of restrictions, as these documents are required to maintain exemptions from payment of impact fees.

K. Maintain all accounts and records necessary to ensure compliance with this Agreement, the school impact fee ordinance, and Chapter 82.02 RCW.

## **II. RESPONSIBILITIES OF THE CITY**

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

A. Be responsible for the following aspects of the impact fee program:

1. Determine, pursuant to the school impact fee ordinance, whether or not residential development activity in the City is exempt from payment of fees;
2. 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;
3. Require certificates indicating payment of school impact fees from the developer prior to approving or permitting residential development activity; and
4. Calculate the fee amount for any non-exempt residential development activity, based upon the schedule of fees adopted by the City pursuant to the school impact fee ordinance.

B. Amend, update, and maintain its Comprehensive Plan and development regulations and the school impact fee ordinance at all times in order to permit the District to continue collecting school impact fees.

C. When applications for exempt development activity within the City have been submitted, enforce covenants or declarations of covenants and restrictions, where the same have been executed as a condition of an exemption from school impact fees after having been approved as to form by the District. When enforcement action is appropriate, the City shall advise the District of such potential enforcement action, and the District shall determine whether to request that the City take enforcement action. If the District requests that the City take enforcement action, the District shall reimburse the City for the City's cost of enforcement.

D. Provide a consolidated appeal process by which an aggrieved party may appeal the impact fee or independent fee calculation.

### **III. AUDIT**

A. The District shall provide to the City excerpts, if any, from the annual audit conducted by the Office of the State Auditor showing all impact fees collected, encumbered, expended and retained by the District during the preceding fiscal year. The District shall provide such excerpts, if any, to the City not less than ninety (90) days following the completion of such audit.

B. Except any documents subject to the attorney-client privilege, the District's records and documents with respect to all matters covered by the school impact fee ordinance or this Agreement shall be subject to inspection, review or audit by the City or an appropriate state agency.

C. 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 authorized officers, employees, agents or representatives to have full access to and the right to examine, audit, and make excerpts or transcripts during normal business hours, all of the District's records with respect to all matters covered by the school impact fee ordinance or this Agreement. The City shall provide 14 days advance written notice of fiscal audits to be conducted.

### **IV. INDEMNIFICATION, HOLD HARMLESS, AND WAIVER**

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, including attorney fees, 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, performance of the duties set forth in Section I of this Agreement, or compliance with the terms of the school impact fee ordinance, as passed by the City Council of the City of Edgewood on the 23<sup>rd</sup> day of July, 2002 and on the 12<sup>th</sup> day of October 2004, including any future amendments to those ordinances. This indemnification by the District of the City shall include, but not be limited to the District's responsibility to refund any fees with interest, which are determined by a court of competent jurisdiction to have been improperly paid, regardless of whether the City erroneously required the fee amount.

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, including attorney fees, in any way resulting in any way from a challenge to the legality of the school impact fee ordinance, as passed by the City Council of the City of Edgewood on the 23<sup>rd</sup> day of July, 2002 and on the 12<sup>th</sup> day of October 2004, including any future amendments to those ordinances.

C. 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, including attorney fees, arising out of or in any way resulting from a dispute regarding the improper collection of impact fees, improper calculation of impact fees, the propriety or rejection of an independent fee calculation, failure to refund impact fees, or failure to refund interest on such 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.

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 V.

E. In the event that a claim is brought which does not activate the District's defense responsibilities provided by subsections A, B, and C, above, the City may offer, at its own cost and expense, to defend itself and/or the District, its officers, employees, or agents, from any claims arising solely out of or solely 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 performance of the duties set forth in Section II of this Agreement except to the extent that the subject matter of certain duties in Section II are covered by the indemnification provisions in subsections A through C. If the City elects to defend the District, the City shall not be liable for any of the District's attorney's fees or litigation costs incurred outside of the City's defense of the District. The District shall promptly refund any impact fees, as required by a final court order, including payment of any pre- or postjudgment interest, and shall pay any costs and attorney fees that might be awarded by the Court. The District retains the option to defend itself in any situation, and may be required to do so in the event that the City does not offer to defend the District pursuant to this subsection.

F. The City's duties to the District under this Section shall not be diminished or extinguished by prior termination of this Agreement pursuant to Section V.

G. The Indemnitee shall promptly notify the Indemnitor of any claim described in paragraphs A, B, C or E, and shall cooperate fully with the Indemnitor in defending the claim.

H. The District agrees not to impose any liability on the City for the City's failure to properly perform any of its responsibilities as set forth in Section II of this Agreement provided that the City shall make reasonable attempts to fulfill those responsibilities.

## **V. EFFECTIVE DATE AND TERMINATION**

A. The District's authorization to receive and collect school impact fees under this Agreement may be terminated without cause by the City, in whole or in part, at any time, but only upon the repeal or invalidation of the school impact fee ordinance. All other obligations under this Agreement shall remain in effect until both of the following conditions shall 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 IV, Indemnification, 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 termination of this Agreement, either properly expend or refund any remaining unexpended or unencumbered impact fees together with interest earned thereon pursuant to Chapter 82.02 RCW.

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 obligation, terms and conditions set forth in this Agreement are breached by the other party.

## **VI. MODIFICATION**

No changes or modifications of this Agreement shall be valid or binding upon either party unless such changes or modifications are in writing and executed by both parties.

## **VII. INTEGRATION**

This Agreement, together with the school impact fee ordinance, contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to bind either party.

## **VIII. SEVERABILITY**

In the event that 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 OF OTHER PARTIES**

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

## **X. DISPUTES**

Jurisdiction of any dispute arising under this Agreement shall be in Pierce County Superior Court, and the substantially prevailing party shall be entitled to recover its costs and reasonable attorney fees.

## **XI. 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 become effective following occurrence of the following:

- A. Adoption of the school impact fee ordinance by the City;
- B. Approval of this Agreement by the official action of the governing bodies of each of the parties hereto;
- C. Execution of this Agreement by the duly authorized representative of each of the parties hereto; and
- D. The filing of the Agreement by the District with the following public officials:
  1. The City Clerk of the City of Edgewood; and
  2. The Secretary of the Board of Directors of the Puyallup School District.

## **XII. ADMINISTRATION**

A. The City's representative for purposes of administering this Agreement is the City Manager or his/her designee whose address is c/o City Hall, 2221 Meridian Avenue East, Edgewood, Washington 98072.

B. The District's representative for purposes of administering this Agreement is the Superintendent or his/her designee whose address is Director of Facilities, 323 - 12th Street Northwest, Puyallup, WA 98371.

## **XIII. WAIVER OF DEFAULT**

Waiver of any default in the performance of this Agreement 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 this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date and year set forth below.

**City of Edgewood**

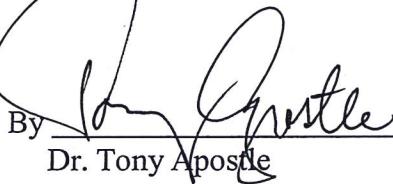
By \_\_\_\_\_  
Its \_\_\_\_\_



City Manager

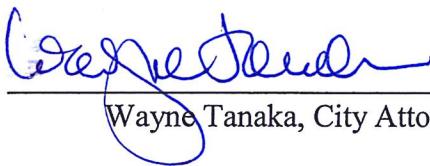
**Puyallup School District**

By \_\_\_\_\_  
Dr. Tony Apostle  
Its Superintendent



Dr. Tony Apostle

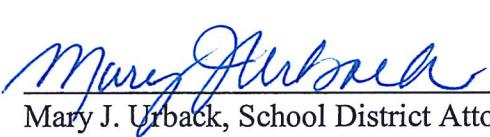
**APPROVED AS TO FORM:**



Wayne Tanaka

Wayne Tanaka, City Attorney

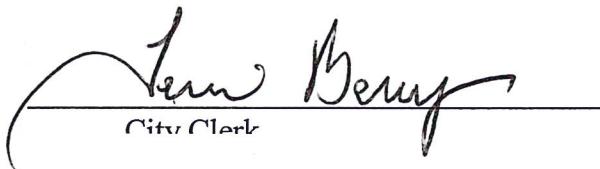
**APPROVED AS TO FORM:**



Mary J. Urback

Mary J. Urback, School District Attorney

**ATTEST/AUTHENTICATED:**



Jan Berry

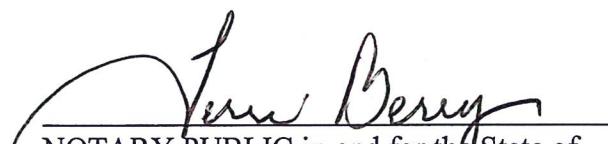
City Clerk

STATE OF WASHINGTON )  
                            ) ss.  
COUNTY OF PIERCE      )

I certify that I know or have satisfactory evidence that Henry J. Lawrence, Jr. is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the City Manager of the City of Edgewood to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12-1-04.



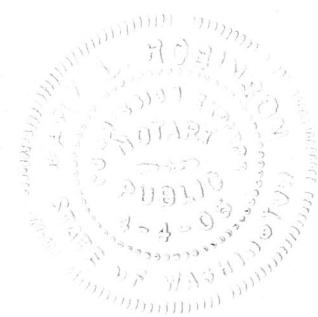
  
\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington, residing at Kubison  
My Commission expires 11-09-08

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STATE OF WASHINGTON )  
                            ) ss.  
COUNTY OF PIERCE      )

I certify that I know or have satisfactory evidence that Dr. Tony Apostle is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Superintendent of the Puyallup School District to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 11/23/04.



  
\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington, residing at Tacoma  
My Commission expires 04-04-05