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

THIS AGREEMENT is entered into in duplicate on this 10th day of December, 2019 by and between Thurston County ("County") and the North Thurston School District No. 3 ("District").

WHEREAS, the Washington State Legislature passed the Growth Management Act of 1990 now codified at Ch. 36.70A RCW, and RCW 82.02.050 -.110 et. seq. (the "Act"), which authorizes the collection of impact fees on development activity to provide public school facilities to serve new growth and 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 County Commissioners adopted Ordinance No. 14819, now codified at *Title 25 Thurston County Code (TCC) IMPACT FEES* for the purpose of implementing the Act and authorizing the collection of school impact fees; and

WHEREAS, in 2018 the District requested that the County, on behalf of the District, implement a fee program based on the Act; and

WHEREAS, the District annually prepares a Capital Facilities Plan in compliance with the Act for adoption by the District's School Board; and

WHEREAS, the District agrees to annually provide a copy of its adopted Capital Facilities Plan to the County for consideration and incorporation pursuant to Title 25.08.030; and

WHEREAS, the County and the District desire to enter into this new Agreement pursuant to and in accordance with the Interlocal Cooperation Act, Chapter 39.34 RCW, for the purposes of administrating and distributing the authorized school impact fees.

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

I. GENERAL AGREEMENT

A. 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.

II. RESPONSIBILITIES OF THE DISTRICT

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

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A. Annually submit to the County a draft six-year capital facilities plan or provide a draft update of a previously adopted plan on or before October 31 of each year and submit a final six-year capital facilities plan or provide a final update of a previously adopted plan on or before November 31 of each year.

B. As a condition of the interlocal agreement, the District shall establish a School Impact Fund with the Office of the Thurston County Treasurer, who serves as the Treasurer for the District. The fund shall be an interest-bearing fund, and such interest received shall be invested in a manner consistent with the investment policies of the District.

C. Expend impact fee revenues provided to the District under this Agreement, and all interest proceeds on such revenues, solely for expenditures authorized by 82.02 RCW, as written or hereafter amended, and as set forth in the adopted Capital Facilities Plan.

D. Prepare an annual report in accordance with the requirements of RCW 82.02.070(1) and TCC 25.04.110 E. The annual report shall be provided to the County no later than August 1 of each year for the preceding calendar year.

E. Refund impact fees and interest earned on impact fees when a refund is required pursuant to RCW 82.02.080, as written or hereafter amended.

F. Maintain accounts and records necessary to ensure proper accounting for all impact fee funds in compliance with this Agreement, the Act, and Title 25, Thurston County Code (TCC).

G. Comply with Title 25 TCC, and comply with all responsibilities therein.

III. RESPONSIBILITIES OF THE COUNTY

The County, 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 impact fee schedule, provided that the District has complied with Section II A, D, and G herein.

B. Assess and collect impact fees pursuant to TCC 25.04.040, as written or hereafter amended, before the issuance of building or occupancy permits.

C. For administrative convenience while processing the fee payments, school impact fees may be temporarily deposited in a county account. Within thirty (30) days after receipt of school impact fees, the County shall transmit the school impact fees and any interest for the District to the District. The District shall deposit the fees in the School Impact Account established by the District.

D. Determine, in consultation with the District pursuant to TCC 25.04.060(C), whether applicants are excluded from the application of the impact fee pursuant to TCC 25.04.060, as

written or hereafter amended. The County shall also consult with the District and follow the process under TCC 25.04.060 to determine potential exemptions under RCW 82.02.060(3).

E. Provide monthly reports to the District providing the following information: (1) the amounts of school impact fees collected that month; (2) the name of each project/development; (3) the permit number(s) associated with each payment; (4) the street address of the property that is the location of the residential development associated with each payment; and (5) the interest attributed to the District that month for each contribution

IV. GENERAL TERMS

A. This Agreement shall be effective when approved by the governing body of both parties. The execution of this Agreement shall serve to terminate the prior agreement between the parties pertaining to SEPA fees.

B. It is recognized that amendments to this Agreement may become necessary, and such amendment shall become effective only when the governing body of each party has approved a written addendum to this Agreement.

C. The parties acknowledge that, except as otherwise specifically provided for herein, the County shall in no event be responsible for the payment of any funds to the District, with the exception of remitting to the District all school impact fees pursuant to TCC 25.04.040, together with any accrued interest as required by law, collected by the County on behalf of the District.

D. This Agreement shall remain in effect until terminated in writing.

E. No separate legal or administrative entity is created under this Agreement.

F. No financing structure or budget is hereby created under this Agreement.

G. No real or personal property will be acquired under this Agreement.

H. This Agreement will be administered by the County Manager for the County of Thurston, or his/her designee.

V. AUDIT

A. Both 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 or by an appropriate state agency.

B. 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 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 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 County will give fifteen days advance notice to the District office of fiscal audits to be conducted.

C. The results and records of said audit shall be maintained and disclosed in accordance with Chapter 42.56 RCW.

D. Duties owed under this section shall not be diminished or extinguished by the prior termination of this Agreement pursuant to Section VIII.

VI. PARTICIPATION IN DEFENSE

A. In the event that the County and/or District is named in a cause of action relating to the implementation of this Agreement, the County and District agree to consult with each other as soon as practicable. The intent of this Section is to encourage collaborative action among the Parties in the defense of said action. Unless otherwise agreed, the participation of the County and the District shall be as follows.

1. In the event that the County is required to defend the legality of the District's school impact fee as calculated pursuant to Title 25 TCC, the County may tender its defense to the District, and the District shall then defend said action;

2. Provided that, if the District offers to defend said action, the District shall not be liable for any of the County's attorney's fees or litigation costs incurred after such offer to defend is made and rejected by the County;

3. Provided further that, if the County decides not to tender the defense, the County shall be liable for its own attorney's fees and all costs of litigation.

B. Duties owed under this section shall not be diminished or extinguished by the prior termination of this Agreement pursuant to Section VIII.

VII. HOLD HARMLESS

A. Each party shall, at its cost and expense, protect, defend, indemnify, and hold harmless the other party, 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 that party, its officers, employees, or agents, relating in any way to the School Impact Fee Program.

1. By way of example, and not of limitation, of the foregoing, the District shall protect, defend, indemnify, and hold harmless the County, 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 following: (a) the District's (by its officers, employees, agents, or representatives) negligent acts or omissions, or intentional acts or omissions; (b) any claims by third parties regarding County actions or covenants required by this Agreement; (c) any liability arising from an audit of the District's Impact Fee account, except to the extent such audit is related to (i) any negligence or intentional acts or omissions by the County, or (ii) failure for any reason to comply with the terms of this Agreement, the terms of the Act, or the terms of Title 25 TCC, all as may be amended from time to time.

B. The District further agrees that the District shall protect, defend, indemnify, and hold harmless the County, 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 County's attorney's fees or costs incurred after such offer to defend is made.

C. The District's duties to the County under this section shall not be diminished or extinguished by the prior termination of this Agreement pursuant to Section VIII.

D. The County 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 exceed the amount of impact fees the County has collected on behalf of the District resulting from the County'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 Title 25 TCC, all as may be amended from time to time. It is the intent of this Section (VII. D.) that any liability created by the County's performance of its duties under this Agreement, the Act, or the terms of Title 25 be satisfied first out of any impact fees attributable to the activity out of which the liability arises, that have been collected by the County 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 County be liable to satisfy the liability.

E. The County's duties to the District under this section shall not be diminished or extinguished by the prior termination of this Agreement pursuant to Section VIII.

VIII. TERMINATION

A. The obligation to collect impact fees under this Agreement may be terminated without cause by the County, in whole or in part, at any time, upon written notice to the District.

All other obligations under this Agreement shall remain in effect so long as the County or the District retain unexpended or unencumbered funds. The obligations under Sections V, VI, and VII of this Agreement shall continue to apply in the event of termination and shall not be diminished or extinguished by the termination of this Agreement.

B. The County, as the official fiscal agent, shall have the authority to 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.

IX. 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.

X. 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.

XI. GOVERNING LAW AND FILING

Prior to its entry into force, an agreement made pursuant to this chapter shall be filed with the Thurston County auditor or, alternatively, listed by subject on Thurston County's web site or other electronically retrievable public source. Thurston County shall be solely responsible for compliance with such filing obligations.

XII. ADMINISTRATION

A. The County's representative shall be:

Name: Ramiro Chaves
Title: County Manager
Address: Building 1, 2000 Lakeridge Drive SW, Olympia, WA, 98502
Telephone Number: (360) 786-5440

B. The North Thurston School District representative shall be:

Name: Debra J. Clemens
Title: Superintendent
Address: 305 College St NE; Lacey, WA 98516
Telephone Number: (360) 412-4413

XIII. 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 County, which shall be attached to the original Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first written above.

XIV START OF IMPACT FEE COLLECTION

The Parties agree that impact fee collection by the County shall not begin until or unless the fee is added to the Thurston County Impact Fee Schedule per Thurston County Code Section 25.04.040 goes into effect.

[*signatures on following page*]

NORTH THURSTON SCHOOL DISTRICT NO. 3

SUPERINTENDENT

Date: _____

THURSTON COUNTY

By: Ramiro Chavez
Its: County Manager

Date: 12/12/2019

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