INTERLOCAL AGREEMENT RELATED TO THE CITY OF LACEY SCHOOL IMPACT FEE PROGRAM

THIS AGREEMENT is entered into this 23 day of March, 2017 by and between the City of Lacey, a Washington municipal corporation (the "City"), and North Thurston School District No.3, a Washington municipal corporation (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, through Ordinance No. 1507, the City has adopted chapter 14.25 Lacey Municipal Code ("LMC") regarding school impact fees for the purposes of implementing the Authorizing Statutes; 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

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

WHEREAS, the District has prepared and adopted a capital facilities plan; and

WHEREAS, the City and the District intend to enter into this Agreement pursuant to and in accordance with the Washington State Interlocal Cooperation Act, Chapter 39.34 RCW, for the purposes of 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 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. GENERAL TERMS

A. This Agreement shall become effective when executed by both parties and shall remain in effect until terminated pursuant to Section VIII of this Agreement.

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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 City has the authority to impose, collect, and distribute school impact fees under chapter 14.25 LMC and the Authorizing Statutes. 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 school impact fees, together with any accrued interest as required by law, collected by the City 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 City for review a six-year capital facilities plan (the "Capital Facilities Plan") meeting the requirements of RCW 36.70A.070.

B. Expend school impact fees, and any earned interest, solely for expenditures authorized by LMC 14.25.150 related to facilities identified in the Capital Facilities Plan.

C. Refund school impact fees disbursed to the District in conformance with LMC 14.25.130 when the school impact fees and interest earned on impact fees are not expended or encumbered within the time limits established by LMC 14.25.130 and state law. Impact fees and accrued interest shall be refunded to the current owner of the property after consultation with the City. Please see section IV.E for those circumstances in which the City is responsible for providing the refund.

D. Prepare and submit to the City on or before April 1 each year an annual report for the preceding calendar year allowing the City to meet the requirements of RCW 82.02.070(1). The District's annual report shall identify the source and amount of all monies collected, earned or received, and 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.

E. Authorize the finance department of the City, as Treasurer for the District, to maintain a separate District fund (the "Agency Fund") into which school impact fees shall be deposited.

F. Notify the City of Lacey, Community and Economic Development Department 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.C above where it is the party responsible for providing the refund.

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G. Provide the District's position in writing regarding a requested adjustment under LMC 14.25.090 or an appeal pursuant to LMC 14.25.110. The District's position shall be provided in a timely manner to the City of Lacey, Community and Economic Development Department and shall clearly state the District's position regarding the requested adjustment or appeal. Nothing herein supersedes the authority and discretion vested by the Lacey Municipal Code with the City of Lacey, Community and Economic Development Department and/or the City of Lacey Hearing Examiner.

H. Provide the District's position in writing regarding an applicant for impact fee deferral pursuant to LMC 14.25.140. The District's position shall be provided in a timely manner to the City of Lacey, Community and Economic Development Department and shall clearly state the District's position regarding the requested adjustment or appeal. Nothing herein supersedes the authority and discretion vested by the Lacey Municipal Code with the City of Lacey, Community and Economic Development Department and/or the City of Lacey Hearing Examiner. If any fees are not paid by the expiration of the deferral period approved by the City under LMC 14.25.140 and the city does not institute foreclosure proceedings for unpaid school impact fees within forty-five (45) days after receiving notice from the District requesting that it do so, the District may institute foreclosure proceedings with respect to the unpaid school impact fees. In the event of foreclosure of a portion of fees owed for a development, the city shall remain responsible for collection of all remaining impact fees.

I. 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.

IV. RESPONSIBILITIES OF THE CITY

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

A. Revise the impact fee schedule for the District when so required.

B. Collect school impact fees for new development as authorized by chapter 14.25 LMC before the issuance of building permits.

C. Deposit all school impact fees into the Agency Fund as required by RCW 82.02.070 and LMC 14.25.120 (B), as those provisions exist or may hereafter be amended. The City 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 providing the following information: (1) the amounts of school impact fees collected that month, (2) the name of each project/development, (3) the city 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.

E. Refund school impact fees when: (1) impact fees are collected in error by the City 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 in conformance with LMC 14.25.130. Those impact fees shall be refunded to the current property owner with any interest that has accrued, after consultation with the District. The City shall be responsible for verifying proof of current property ownership when it is the party providing the refund.

F. If the City is unsuccessful in collecting school impact fees pursuant to chapter.14.25 LMC, the City shall notify the District and the District shall be responsible for initiating further collection actions; provided that, as necessary, the City shall provide the District with all information related to the development for which the fee was not collected and the City'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.D of this Agreement, RCW 82.02.070, and LMC 14.25.120(D).

H. Request the District's written position regarding a requested adjustment under LMC 14.25.090 or an appeal pursuant to LMC 14.25.110. Nothing herein supersedes the authority and discretion vested with the City of Lacey, Community and Economic Development Department and/or City of Lacey Hearings 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 under RCW 82.02.060 and LMC 14.25.080(9) as currently adopted or hereafter amended, and provide the District with notice and a request to approve the same as provided by RCW 82.02.060.

J. Adopt and maintain a system for the deferred collection of impact fees for single-family detached and attached residential construction pursuant to RCW 82.02.050(3) and LMC 14.25.140. The City shall require an applicant deferring fees under such deferral system to record a deferred impact fee lien against the property in favor of the county, city, or town in the amount of the deferred impact fees. Such lien shall be substantially in the form attached in Appendix __. The City shall provide the District with (1) a copy of the application for deferral and (2) the executed fee lien recorded for any approved deferral. If any fees are not paid by the expiration of the deferral period approved by the City under LMC 14.25.140, the City shall provide notice of the payment default to the District within ten (10) days of the deferral period's expiration. Upon receipt of final payment of all deferred impact fees for a property, the City must execute a

deferred impact fee lien release in accordance with RCW 82.020.050(3) and LMC 14.25.140 and in substantially the form attached in Appendix ___. The City shall provide the District with a copy of any such executed lien release within ten (10) days of the City's execution of the same.

K. Assist the District in determining student generation factors of new developments.

V. AUDIT

A. 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 for the previous ten years 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 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 City 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.

VI. 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 its respective responsibilities under the terms of this agreement.

This section shall survive termination of this Agreement.

VII. 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 City and the District, which shall be attached to the original Agreement.

VIII. TERMINATION

A. The obligation to collect impact fees under this Agreement may be terminated by the City at any time, but only upon the repeal or expiration of Chapter 14.25 LMC. 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 obligation 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 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.

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

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.

XI. 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 Thurston County Washington. This Agreement shall be filed with the clerk of the district, the Thurston County Records and Election Division, the Secretary of State and the Washington Department of Commerce.

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XII. ADMINISTRATION AND NOTIFICATIONS

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

If to the City:

City of Lacey, Community and
Economic Development Department
420 College Street Southeast
Lacey, Washington 98503
Attn: Rick Walk
Phone: (360) 491-5642
Email: rwalk@ci.lacey.wa.us

If to the District:

North Thurston Public Schools
305 College Street NE
Lacey, Washington 98516
Attn: Mike Laverty
Phone: (360) 412-4400
Email: mlaverty@nthurston.k12.wa.us

with copy to:

City of Lacey, City Attorney
420 College Street Southeast
Lacey, Washington 98503
Attn: Dave Schneider
Phone: (360) 491-1802
Email: dave@laceylawgroup.com

with copy to:

Perkins Coie LLP
10885 NE 4th Street, Suite 700
Bellevue, WA 98004
Attn: Kristine R. Wilson
Phone: (425) 635-1426
Email: KRWilson@perkinscoie.com

XIII. NO SEPARATE LEGAL ENTITY

This Agreement does not establish a separate legal entity to conduct the cooperative undertaking.

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.

[Signatures on following page.]

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CITY OF LACEY, a Washington municipal corporation

By: _____
Its: City Manager
Date: 3/23/2017

APPROVED AS TO FORM ONLY

_____
Name: David Schneider
Title: City Attorney

NORTH THURSTON SCHOOL DISTRICT NO. 3, a Washington municipal corporation

By: _____
Its: assistant Superintendent
Date: ~~3-30-17~~ 4-12-17 cwd

APPROVED AS TO FORM ONLY

Kristine R. Wilson
Name: Kristine R. Wilson
Title: Partner, Perkins Coie LLP

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