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

THIS AGREEMENT is entered into this 22nd day of November, 2022 (which is the "effective date") by and between the City of Olympia, 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 (the "GMA") now codified at chapter 36.70A RCW, and RCW 82.02.050-.110 et seq. (together, the "Authorizing Statutes") authorizing the collection of impact fees on development activity to provide public school facilities to serve new growth and 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. 7337, the City has amended chapter 15.04 Olympia Municipal Code ("OMC") 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 sets 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 is effective when executed by both parties and remains in effect until terminated pursuant to Section VIII of this Agreement.

B. The parties recognize that amendments to this Agreement may become necessary and that any such amendments are 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 15.04 OMC and the Authorizing Statutes. The parties agree that the City is in no event 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, shall:

A. Provide to the City for review a six-year capital facilities plan (the "Capital Facilities Plan") meeting the requirements of RCW 36.70A.070 on or before October 31 of each year.

B. Expend school impact fees, and any earned interest, solely for expenditures authorized by 82.02 RCW and OMC 15.04.130, and as set forth in the Capital Facilities Plan.

C. Refund school impact fees disbursed to the District in conformance with OMC 15.04.120 when the school impact fees and interest earned on impact fees are not expended or encumbered within the time limits established by OMC 15.04.120 and state law. Impact fees and accrued interest must 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 must 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 Office of the Thurston County Treasurer, as Treasurer for the District, to maintain a separate District fund (the "School Impact Account") into which school impact fees must be deposited.

F. Notify the City, in writing, at least five days before refunding, in whole or in part, any impact fee. The District is 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.

G. Provide the District's position in writing regarding a requested credit under OMC 15.04.070 or an appeal pursuant to OMC 15.04.090. The District shall provide its position in a timely manner to the City and shall clearly state its position regarding the requested adjustment or appeal. Nothing herein supersedes the authority and discretion vested by the Olympia Municipal Code with the City and/or the City Hearing Examiner.

H. Provide the District's position in writing regarding an applicant for impact fee deferral pursuant to OMC 15.04.040 J. The District shall provide its position in a timely manner to the City and shall clearly state its position regarding the requested adjustment or appeal. Nothing herein supersedes the authority and discretion vested by the Olympia Municipal Code with the City and/or the City Hearing Examiner. If any fees are not paid by the expiration of the deferral period approved by the City under OMC 15.04.040 J and the City does not institute foreclosure proceedings for unpaid school impact fees within 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 remains responsible for collection of all remaining impact fees.

I. Maintain all accounts and records that are necessary to ensure proper accounting for the School Impact Account as required by law. This District responsibility survives termination of this Agreement.

IV. RESPONSIBILITIES OF THE CITY

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

A. Revise the impact fee schedule for the District when so required, and notify the District when the new impact fee schedule is adopted and effective.

B. Assess and collect school impact fees as authorized by chapter 15.04 OMC before the issuance of building permits.

C. Deposit all school impact fees into the School Impact Account as required by RCW 82.02.070 and OMC 15.04.110, as those provisions exist on the effective date or are thereafter amended. The City shall deposit school impact fees into the School Impact Account within 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 OMC 15.04.120. Those impact fees must be refunded to the current property owner with any interest that has accrued, after consultation with the District. The City is 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 15.04 OMC or collects an incorrectly calculated fee, the City shall notify the District and the City shall initiate further collection actions and, 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 OMC 15.04.110 F.

H. Request the District's written position regarding a requested credit under OMC 15.04.070 or an appeal pursuant to OMC 15.04.090. Nothing herein supersedes the authority and discretion vested with the City and/or City Hearing Examiner.

I. Determine, on a case-by-case basis, whether a development is exempted from impact fees pursuant to OMC 15.04.060, including whether to grant an exemption for low-income housing under RCW 82.02.060 and OMC 15.04.060 C as existing on the effective date or thereafter 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 OMC 15.04.040 J. The City shall require an applicant deferring fees under such deferral system to sign an impact fee deferral agreement. The City shall provide the District with (1) a copy of the application for deferral and (2) the executed impact fee deferral agreement. If any fees are not paid by the expiration of the deferral period approved by the City under OMC 15.04.040 J, the City shall provide notice of the payment default to the District within 10 days of the deferral period's expiration.

K. At the request and direction of the District, assist the District in determining student generation factors of new developments.

V. AUDIT

A. Both party's records and documents with respect to all matters covered by this Agreement are subject to inspection, review, or audit by the other party or by an appropriate state agency.

B. The District shall cooperate with any monitoring or evaluation activities conducted by the City that pertain to the subject of this Agreement. The District shall 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 District shall permit the City and/or any of its employees, agents, or representatives 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 shall give fifteen 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 the Public Records Act.

VI. HOLD HARMLESS

Each party shall, at its cost and expense, defend, protect, and hold harmless the other party, from and against all costs, 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 survives termination of this Agreement.

VII. EXERCISE OF RIGHTS OR REMEDIES

Failure of either party to exercise any rights or remedies under this Agreement is not a waiver of any obligation by either party and does not prevent either party from pursuing the right or remedy at any future time. Waiver of any default may not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement may 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 must 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 15.04 OMC. All other obligations under this Agreement 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 is continuing and may not be diminished or extinguished by the termination of this Agreement.

B. The City has 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 limits, waives, or extinguishes 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 does 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 must be construed and enforced in accordance with, and with validity and performance hereof, is governed by, the laws of the State of Washington. Any lawsuit regarding this Agreement must be brought and maintained only in the Superior Court of Thurston County Washington. The District shall file this Agreement with the clerk of the district, the Thurston County Records and Election Division, the Secretary of State and the Washington Department of Commerce.

XII. ADMINISTRATION AND NOTIFICATIONS

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

If to the City:

City of Olympia
PO Box 1967
Olympia, WA 98507-1967
Attn: Tim Smith, CP&D Deputy Dir.
Phone: (360) 570-3915
Email: tsmith@ci.olympia.wa.us

If to the District:

North Thurston Public Schools
6620 Carpenter Road SE
Lacey, Washington 98503
Attn: Dean Martinolich
Phone: (360) 412-4500
Email: dmartinolich@nthurston.k12.wa.us

with copy to:

City of Olympia, City Attorney
PO Box 1967
Olympia, WA 98507-1967

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; NO REAL OR PERSONAL PROPERTY TO BE ACQUIRED OR HELD

This Agreement does not establish a separate legal entity to conduct the cooperative undertaking. No real or personal property will be acquired or held as part of carrying out this Agreement.

XIV. ENTIRE AGREEMENT

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.]

CITY OF OLYMPIA, a Washington municipal corporation

By: Steven J Burney
Steven J. Burney
City Manager
jburney@ci.olympia.wa.us
Date: 11/22/2022

APPROVED AS TO FORM ONLY

Michael M. Young
Michael M. Young
Deputy City Attorney

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

By: Debra Jr Clemens
Dr. Debra Clemens
Superintendent
dclemens@nthurston.k12.wa.us
Date: 11/3/22

APPROVED AS TO FORM ONLY

Megan Lin
Megan Lin
Counsel