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SKAGIT COUNTY CLERK

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Filed for Record at Request of

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ATTORNEY AT LAW
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MOUNT VERNON, WASHINGTON 98273
(360) 336-6508

Document Title: Interlocal Agreement for the Collection, Distribution and
Expenditure of School Impact Fees

Reference Number(s) of Documents Assigned or Released: N/A

Grantor: **Signatures**

Town of LaConner, Bud Moore, Mayor
LaConner School District #311, Rick Thompson, President, Board
of Directors

Grantee: Public

Abbreviated Legal Description: N/A

Assessor's Parcel/Tax I.D. Number: N/A

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

THIS AGREEMENT is entered into this _____ day of _____, 1997 by and between the Town of La Conner (the "Town") and the La Conner School District #311 (the "District").

WHEREAS, the Washington State Legislature passed the Growth Management Act, RCW 36.70A et seq., as amended, and RCW 82.02 et seq., as amended, (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 Town as a subelement of the of the capital facilities element of the Town of La Conner Comprehensive Plan by Ordinance No. 693; and

WHEREAS, the Town has adopted Ordinance No. 694 for the assessment and collection of school impact fees upon certain new residential developments on behalf of the District; and

WHEREAS, the Town 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 administering and distributing the authorized impact fees.

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

I. GENERAL AGREEMENT.

The Town of La Conner (the "Town") and the La Conner School District #311 (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 Town a six-year capital facilities plan or an update of a previously adopted plan, which meets the requirements of the Act and Ordinance No. 694 on or before July 1st of each year.
- B. Authorize Skagit 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 Section 9 of Ordinance No. 694.
- D. Prepare an annual report in accordance with the requirements of RCW 82.02.070 and Section 9 of Ordinance No. 694 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 Town on or before February 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 Ordinance No. 694.
- G. Fulfill any and all obligations of the District set forth in Ordinance No. 694.

III. RESPONSIBILITIES OF THE TOWN.

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

- A. Timely review and adopt the District's updated Capital Facilities Plan and the District's revised impact fee schedule as a part of the adoption of the Town's updated Comprehensive Plan.
- B. Deposit within seven (7) days all impact fees collected on behalf of the District in the School Impact Fee Account in the Office of the Skagit 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 the system improvements

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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 Section 5 of Ordinance No. 694.
- E. Fulfill any and all obligations of the Town set forth in Ordinance No. 694.

IV. GENERAL TERMS.

- A. This Agreement shall become effective when executed by both parties and filed with the Skagit County Auditor, 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 Town is vested with the authority to impose and to collect school impact fees. The parties agree that the Town 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 Town or appropriate state agency.
- B. The District agrees to cooperate with any monitoring or evaluation activities conducted by the Town that pertain to the subject of this Agreement. The District agrees to allow the Town, or appropriate state agencies, and/or any of their authorized 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 the matters covered by this Agreement. The Town and/or any of its authorized 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 Town will give fifteen (15) days advance written notice to the District of fiscal audits to be conducted and the name(s) of the authorized employees, agents, or representatives.
- 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 Town, with 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 School Impact Fee Program or compliance with the terms of Ordinance No. 694.
- B. The District further agrees that the District shall, at its own cost and expense, protect, defend, indemnify, and hold harmless the Town, 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 Town's attorney's fees or litigation costs incurred after such offer to defend is made.
- C. The District's duties to the Town under this Section shall not be diminished or extinguished by the prior termination of this Agreement pursuant to Section VII.
- D. The District and the Town shall each be liable for one-half of any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the adoption of the District's Facilities Plan as part of the Town's Comprehensive Plan or the adoption of the ordinance implementing the collection of impact fees on behalf of the District, including but not limited to, claims challenging the adequacy of the Facilities Plan, the projections of student enrollment, the projections of facilities' costs and/or the computation of impact fees, the general constitutionality or legality and/or reasonableness of the Facilities Plan and implementing ordinance, as well as the application of the ordinance to individual development activities to which it applies.
- E. The Town shall, at its own cost and expense, protect, defend, indemnify, and hold harmless the District, 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 Town, its officers, employees, or agents, relating to the Town's implementation of the school impact fee program or the terms of Ordinance No. 694; provided, however, that if the Town offers to defend, the Town shall not be liable for any of the District's attorney's fees or litigation costs incurred after such offer to defend is made.

- F. The Town'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.
- G. The terms of this Section VI shall apply only to Ordinance No. 694 implementing the school impact fee program. The terms of this Section VI shall not apply to other ordinances or amendments to Ordinance No. 694 implementing other impact fee programs, including but not limited to fire protection, park, and road impact fee programs.

VII. TERMINATION.

- A. The obligation to collect impact fees under this Agreement may be terminated by the Town at any time, but only upon the repeal of Ordinance No. 694. All other obligations under this Agreement shall remain in effect until both of the following conditions have been satisfied: (1) the Town or the District provides written notice that this Agreement is being terminated; and (2) neither the District, nor the Town 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 Town 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.

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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 La Conner School District #311, the Town of La Conner, and the Skagit County Auditor.

XI. ADMINISTRATION.

A. The Town's representative shall be:

Elizabeth Sjostrom, Town Planner
Town of La Conner
P.O. Box 400
La Conner, Washington 98257

Telephone: (360) 466-3125

B. The District's representative shall be:

Tim Bruce, Superintendent
La Conner School District #311
311 North Sixth Street
P.O. Box D
La Conner, Washington 98257

Telephone: (360) 466-3171

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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 Town, which shall be attached to the original Agreement.

TOWN OF LA CONNER, WASHINGTON

LA CONNER SCHOOL DISTRICT #311



Bud Moore, Mayor



Rick Thompson, President,
Board of Directors

APPROVED AS TO FORM:



Bradford E. Furlong, Town Attorney



Tim Bruce, Superintendent

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