

**INTERLOCAL AGREEMENT BY AND BETWEEN
THE CITY OF VANCOUVER AND
VANCOUVER SCHOOL DISTRICT, NO. 37**

This Interlocal Agreement (the "Interlocal Agreement") is made and entered into this 1st day of August 2016, by and between the City the Vancouver (City) and Vancouver School District, No. 37 (District).

RECITALS

WHEREAS, the City and District have had a long-standing partnership that benefits the community they both serve; and

WHEREAS, the partnership between the City and District enables a multitude of mutually beneficial investments and services to occur; and

WHEREAS, the City and District wish to continue that partnership; and

WHEREAS, pursuant to the terms of a 1995 agreement between the City and District, the City has collected school impact fees (SIF's) on behalf of the District;

WHEREAS, under the terms of that 1995 agreement, the City's liability to the District is limited to the fees the City collects; and

WHEREAS, on December 7, 2015, the Vancouver City Council, pursuant to the District's request, adopted Ordinance M-4147 that established new school impact fees (SIF's) for residential development in the City effective on January 7, 2016; and

WHEREAS, an administrative error resulted in lower impact fees being required as a condition of development during the period from January 7, 2016 and March 17, 2016; and

WHEREAS, as a result of this error, some applications have vested to the pre-January 7, 2016 SIF's; and

WHEREAS, pursuant to the Land Use Petition Act, Chapter 36.70C RCW, the City believes it was precluded from correcting the error 21 days after the applications were approved; and

WHEREAS, the City, and the District having differing opinions regarding the City's options to remedy the error and the City's liability, the City nevertheless acknowledges the error and wishes to resolve it in a manner that reinforces the relationship between the District and the City and finally resolves the matter; and

WHEREAS, the City and District acknowledge that the amount of the loss of SIF's is –dependent upon actual construction of approved developments but that the District should recover lost SIF's that can be demonstrated; and

WHEREAS, the City and District agree that this Interlocal Agreement resolves the aforementioned dispute.

NOW, THEREFORE, in consideration of the District's release of City and City's promises made herein, the parties agree as follows:

AGREEMENT

1. AUTHORITY AND PURPOSE. This Interlocal Agreement is entered into pursuant to the authority of RCW Chapter 39.34. The purpose of this Interlocal Agreement is to resolve a dispute between the District and City related to applying incorrect school impact fees to residential developments.

2. TERM. This Interlocal Agreement shall become effective August 31, 2016 and will expire on as provided for in Paragraph 8.

3. ADMINISTRATION; PROPERTY; FINANCING; BUDGETS. This Interlocal Agreement does not establish or create a separate legal or administrative entity or a joint board to accomplish the purposes hereof. The City and the District shall be jointly responsible for administering the performance herein. The City and the District will not acquire any jointly-owned real or personal property in connection with performance of this Interlocal Agreement. The City and the District shall each be responsible for their own individual financial costs of performance of this Interlocal Agreement. No joint budget will be prepared to carry out the performance of this Interlocal Agreement.

Any real or personal property used or acquired by the City or the District in connection with performance of this Interlocal Agreement shall be disposed of by that Party as it shall determine in its discretion.

4. PRINCIPLES. This Interlocal Agreement shall be based on the following principles:

- A. Cooperative relationships between the City and District benefit both organizations and the residents of the City and District.
- B. The City acknowledges an error in applying incorrect School Impact Fees (SIF) to certain residential applications.
- C. The City denies legal liability for the error.
- D. The District disputes the City's denial of legal liability.
- E. Notwithstanding this dispute, the City and District agree that the District shall be made whole to the extent the District does not actually receive SIFs that it otherwise would have received if no error occurred.

- F. In consideration for making the District whole pursuant to this Interlocal Agreement, the District releases the City from any further liability for failing to collect the Legislated Fee.

5. SUBSTANTIVE AGREEMENTS

A. Contingent Credit to the District.

- (1) City and District have agreed that the amount of SIF's that should have been applied to four City development approvals issued between January 7, 2016 and March 17, 2016 is \$597,864.43 ("Legislated SIF").
- (2) The SIF amount actually applied to development approvals issued between January 7, 2016 and March 17, 2016 is \$211,844 ("Applied SIF").
- (3) The Applied SIF is subtracted from the Legislated SIF to obtain the maximum amount that may be due to the District under this Agreement ("Contingent Credit") and is \$386,020.43. Receipt of any of the Contingent Credit is contingent on a qualifying permitting action occurring as is provided for in 5(B).
- (4) The list of approved applications applying the Applied SIF is reflected in the attached Exhibit "A" (Approved Applications).
- (5) The Contingent Credit amount shall be reduced by the Actual Credit to the District calculated under 5(B) below.

B. Actual Credit to the District.

- (1) The actual credit to the District (Actual Credit) under this Interlocal Agreement available for use by the District under 5(C) shall be established pursuant to this Section 5(B).
- (2) The Actual Credit will be established when a residential building within a development in the Approved Application is issued a building permit.
- (3) Upon the issuance of a building permit for an Approved Application, the difference between the Legislated SIF and the Applied SIF becomes an Actual Credit and is available for the District's use as provided for in this Interlocal Agreement.
- (4) An Actual Credit shall have a duration of ten (10) years from the date of its creation by issuance of a building permit after which it shall expire.
- (5) The Approved Applications are listed in Exhibit "A." When the projects lose their vesting through lapse of time or for any other reason, the City will apply the SIF fee then in effect for any future development applications at the project sites. Such loss of vesting will result in a reduction of the Contingent Credit under Paragraph 5(A).
- (6) The Applied SIF collected shall be transmitted to the District per current City practice.
- (7) The District and City agree that eleven single family permits were issued between January 7, 2016 and March 2016. The amount of SIF that should have been applied is \$31,688.25 ("Legislated SIF"). The SIF actually applied was \$16,753.00.

(8) The District is immediately entitled to Actual Credit of \$14,935.25, in addition to the Contingent Credit of \$386,020.43 identified in 5A(3).

C. Use of Actual Credits.

- (1) The District may use the Actual Credits to offset development and building fees for new development and construction proposed by the District. These fees may include land use review fees, building permit review fees, building permit fees, and engineering review fees.
- (2) Actual Credits must be applied to a District project, or put to another use as authorized in Subsection D, within ten years of the date this Agreement is entered into.

D. Other Use.

By written mutual agreement of the City and District, the City may contribute real estate, partner with the District on capital facility improvements that would otherwise be the responsibility of the District (such as street frontage improvements, utility extension, and the like) or for facilities that provide broad community benefit (such as playgrounds, parks or sports field improvements) in a manner that relieves the District of these expenses and are within the Actual Credit amount. In the event of such mutual agreement the City and the District shall set an amount representing the value of the City's contribution and the total of the outstanding Actual Credits shall be reduced by said amount.

6. **ADMINISTRATION.**

A. Statements. Thirty days after execution of this Interlocal Agreement, City shall transmit to the District a statement which summarizes the status of SIF credits. This statement shall include the Contingent Credits and Actual Credits, if any are in effect by such date, for each project listed on Exhibit "A". The City shall send the District quarterly statements thereafter.

B. Use of Credit. The District shall sign a statement indicating its request to apply Actual Credits to an eligible review or permit under 5(C)(1). The City Manager and Superintendent may agree by separate written agreement to apply the credit pursuant to 5(D).

7. **DISPUTE RESOLUTION.** In the event of a dispute between the City and the District regarding performance of this Interlocal Agreement:

A. Designated representatives of the Vancouver City Manager and the Vancouver District Superintendent shall review such dispute and options for

resolution. Any dispute not resolved by the representatives shall be referred to the City Manager and the Superintendent. The decision of the City Manager and the Superintendent shall be final as between the parties.

B. Any dispute concerning the terms of this Interlocal Agreement that cannot be resolved by the negotiation process set forth herein shall be submitted to mediation with the District and City agreeing to a neutral mediator. Both parties hereby agree to participate in such mediation in good faith, but nothing herein obligates either Party to resolve the dispute in such mediation.

8. DURATION. This Interlocal Agreement shall expire when the last Actual Credit is used and all Contingent Credits have lost vesting status.

9. RELEASE. By execution of this Interlocal Agreement, the District releases City from any liability in relation to any claim the District may have for failure to collect the Legislated Fee from the developments identified in this Agreement. The City represents that under its best information and belief that the residential development approvals listed in Exhibit "A" is the complete list of development applications approved with the Applied SIF. The District is not releasing the City from liability for errors that have not been identified and that are not addressed in this Agreement. If the City discovers it made similar errors in assessing SIFs on additional developments, the District will release the City from any liability it may have for failure to collect the correct SIF provided the City issues the District a Contingent Credit in the same manner as is being done for the developments that are addressed in this Agreement.

10. AMENDMENTS. This Interlocal Agreement shall not be modified or amended in any manner except by an instrument in writing executed by the Parties hereto after approval by the legislative bodies of each of the Parties.

11. ASSIGNMENT; BENEFIT OF AGREEMENT. No Party hereto shall assign its rights or obligations under this Interlocal Agreement without the prior written consent of the other Parties hereto. This Interlocal Agreement shall inure to the benefit of and be binding upon the Parties and their successors and permitted assigns.

12. NOTICES. All communications, notices and demands of any kind which are required by this Interlocal Agreement shall be in writing and shall be deemed given when deposited in the U.S. mail, first class postage prepaid, to the following addresses or to such other addresses as the Parties shall from time to time give notice to the other Parties:

If to the City:

City of Vancouver
P.O. Box 1995
410 West 6th Street
Vancouver, WA 98668-1995
Attn: City Manager

If to the District:

Vancouver School District

2901 Falk Road
Vancouver, WA 98661
Attn: Superintendent

13. COUNTERPARTS. This Interlocal Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

14. FILING THIS INTERLOCAL AGREEMENT. Within five (5) days from the date of execution of this Interlocal Agreement, a copy thereof shall be filed with the County Auditor of the County. The City and the County agree that there shall be three (3) duplicate originals of this Interlocal Agreement procured and distributed for signature by the necessary officials of the parties. Upon execution, one executed original of this Interlocal Agreement shall be retained by the Vancouver City Clerk and one shall be retained by each of the other parties. The Vancouver City Clerk shall cause a copy of this Interlocal Agreement to be posted on the City website pursuant to Chapter 32, Laws of Washington 2006 (RCW 39.34.040). Upon execution of the originals and posting of a copy on the City's website, each such duplicate original shall constitute an agreement binding upon all parties.

15. LIMITATION OF RIGHTS. Nothing expressed in or to be implied from this Interlocal Agreement is intended to give, or shall be construed to give, any person other than the Parties hereto, and their permitted successors and assigns, any benefit or legal or equitable right, remedy or claim under or by virtue of this Interlocal Agreement. The City and the District shall be deemed to be third-party beneficiaries of this Interlocal Agreement.

16. HEADINGS. The headings herein are solely for convenience of reference and shall not constitute a part of this Interlocal Agreement nor shall they affect its meaning, construction or effect.

17. GOVERNING LAW. This Interlocal Agreement shall be construed in accordance with and governed by the Constitution and laws of the State of Washington applicable to contracts made and performed within such State.

18. VENUE. The venue for any dispute arising under this Interlocal Agreement shall be in the Superior Court of the State of Washington for Clark County, Washington.

19. NO PERSONAL LIABILITY. Notwithstanding anything contained to the contrary in any provision of this Interlocal Agreement, it is specifically agreed and understood that there shall be absolutely no personal liability on the part of any individual

officers or directors of the City or the District with respect to any of the obligations, terms, covenants, and conditions of this Interlocal Agreement.

20. SEVERABILITY. If any term or provision of this Interlocal Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Interlocal Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Interlocal Agreement this 1st day of August, 2016.

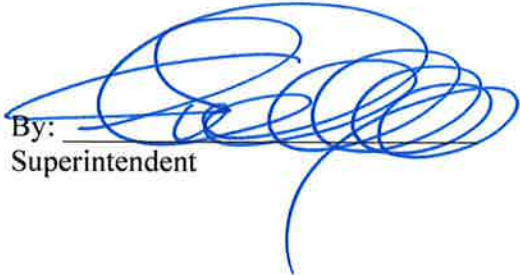
CITY OF VANCOUVER

By: _____
City Manager



VANCOUVER SCHOOL DISTRICT

By: _____
Superintendent

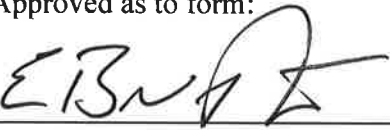


Approved as to form:

City Attorney

Attest:

City Clerk



Approved as to form:

District Counsel

Attest:

Secretary

Exhibit A

Land Use Applications Subject to Interlocal Agreement

Contingent SIF Credits

Project Name	Project Number	# Units	Legislated SIF	Applied SIF	Contingent SIF Credit
Our Heroes Apts.	LUP-49565	49	\$116,714.57	\$41,356	\$75,358.57
66 th Ave. Apts.	LUP-49704	56	\$133,388.08	\$47,264	\$86,124.08
34 th St. Apts.	LUP-49313	20	\$47,638.60	\$16,880	\$30,758.60
68 th St. Apts.	LUP-46007	126	\$300,123.18	\$106,344	\$193,779.18
Total			\$597,864.43	\$211,844	\$386,020.43

Actual SIF Credits

Project Name	Project Number	Legislated SIF	Applied SIF	Actual SIF Credit
Neals Sq, Lot 1	RES-195443	\$2,880.75	\$1,523	\$1,357.75
Neals Sq, Lot 2	RES-195444	\$2,880.75	\$1,523	\$1,357.75
Neals Sq, Lot 3	RES-195445	\$2,880.75	\$1,523	\$1,357.75
Neals Sq, Lot 4	RES-195458	\$2,880.75	\$1,523	\$1,357.75
Neals Sq, Lot 6	RES-197638	\$2,880.75	\$1,523	\$1,357.75
Neals Sq, Lot 7	RES-197658	\$2,880.75	\$1,523	\$1,357.75
Walnut Mdws Estates, Lot 11	RES-197586	\$2,880.75	\$1,523	\$1,357.75
Walnut Mdws Estates, Lot 16	RES-195284	\$2,880.75	\$1,523	\$1,357.75
Walnut Mdws Estates, Lot 17	RES-195552	\$2,880.75	\$1,523	\$1,357.75
Albers Residence	RES-195614	\$2,880.75	\$1,523	\$1,357.75
Merrifield Acre #8, Lot 9	RES-196310	\$2,880.75	\$1,523	\$1,357.75
Total		\$31,688.25	\$16,753	\$14,935.25