INTERLOCAL AGREEMENT
REGARDING SCHOOL IMPACT FEE COLLECTION

This Interlocal Agreement (this "Agreement") is entered into as of March 23, 2016, by and between the CITY OF EVERETT, a Washington municipal corporation (the "*City*"), and Mukilteo School District, a municipal corporation, (the "*District*").

RECITALS

A. On August 13, 2014, the City Council passed Ordinance 3396-14, regarding school district impact fees for residential development (the "*Ordinance*"), as authorized under RCW 82.020.050 and other applicable law.

B. The purpose of this agreement is to meet the requirement under Section 12 of the Ordinance, that "each participating school district" enter into "an agreement with the City for reimbursement of the actual administrative costs of assessing, collecting, and handling fees for the district, any legal expenses and staff time associated with the defense of this chapter against district specific challenges, and payment of any refunds provided under Section 11 of this Ordinance."

C. This Agreement is pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. District Responsibility. The District shall comply with the Ordinance and with all applicable laws regarding school district impact fees, including without limitation all requirements regarding capital facilities plans, school impact fee schedules, impact fee limitations, use of funds, and refunds. The District shall also, if requested by the City, timely provide to the City a written statement of the District's position regarding developer requests for credits against school district impact fees, refunds or other matters.

2. City Responsibility.

a. By the fifteenth of each month, the City shall make payment to the District for school impact fees collected during the preceding month. The City may deduct from the total amount the Administrative Fee due to the City under this Agreement. Along with the Payment, the City shall provide a report detailing the impact fees collected as well as any deductions the City has made.

b. The City shall in no event be liable to the District in connection with school impact fees, with the sole exception of remitting to the District the school impact fees (together with any accrued interest as required by law) actually collected by the City on behalf of the District. If the City erroneously fails to collect school impact fees as required under the Ordinance or otherwise, then the City shall make an attempt to collect such fees under processes allowed by City ordinance or applicable law. If the City is unsuccessful in collecting such school impact fees, the City shall notify the District, and the District shall be responsible for further collection actions. In such a case, 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.

c. The City has authority to refund school impact fees if (i) impact fees are collected in error by the City; (ii) a proposed development activity does not proceed and no impact to the District has resulted; or (iii) the school impact fee program is terminated.

3. Fees.

a. Per Dwelling Unit Administrative Fee. The District shall pay to the City a fee equal to forty-four dollars ($44) per dwelling unit for all school impact fees collected by the City. The City may deduct all such fees from the payment made to the District. If the City has not so deducted from such payment, then the District, upon written notice from the City, shall pay, within 30 days upon of receipt of notification from the City, all outstanding per dwelling unit fees due to the City. If the City has delivered school impact fees to the District prior to the date of this Agreement, and the City has not already deducted the per dwelling unit fees from such payments, then the District shall pay the per dwelling unit fees to the City within thirty (30) days after the date of this Agreement.

b. Adjustment of Per Dwelling Unit Administrative Fees. Beginning in 2016, the per dwelling unit administrative fee will increase effective each January 1st by a percentage equal to the percentage increase for the preceding calendar year in the CPI-U for the greater Seattle area, published by the Bureau of Labor Statistics, United States Department of Labor.

c. Credit/Debit Card Fees. The District shall pay a fee to the City in connection with applicants paying school impact fees with a credit or debit card. This fee per transaction will be 2.5% of the amount paid by each applicant to the City by credit card or debit card. The City may deduct such fees from the payments made to the District account under Section 2 above. If the City has not so deducted from such payments, then the District shall pay, within 30 days upon of receipt of invoice from the City, all outstanding fees due to the City under this Section 4. The City may from time to time, effective upon written notice to the District, increase fees under this Section 4 as necessary to pay for increased City credit/debit card costs or bank transfer costs.

4. Expiration of Agreement/Automatic Renewal. The initial term of this Agreement expires on December 31, 2019. After the initial term, this Agreement will automatically continue to extend for one-year extension terms, unless one party gives a non-renewal notice at least ninety (90) days before the end of an extension term.

5. Termination. This Agreement terminates: (i) ninety (90) days after either party delivers written termination notice to the other party or (ii) the Ordinance is repealed. After termination, neither the District nor the City on behalf of the District may retain unexpended or unencumbered school impact fees or interest earned on those fees.

6. Indemnification. To the maximum extent permitted by law, the District shall defend, indemnify, and hold harmless the City and all of its officers, employees, and agents from all claims, demands, suits, actions, losses, and liability of any kind, to the extent arising from or relating to (a) breach of this Agreement by the District or its agents or contractors, (b) the negligence or willful misconduct of the District or its agents or contractors in the performance of this Agreement, (c) any legal expenses or staff time associated with the defense of the Ordinance against District-specific challenges, (d) and payment of any refunds provided under the Ordinance. The District agrees that its obligations under this Section 7 extend to any claim, demand, or cause of action brought by, or on behalf of, any of its employees or agents, and for that purpose the District specifically waive, with respect to each other only, any immunity under RCW Title 51.

7. General Provisions.

a. Administration. Each party to this Agreement shall serve as an administrator of this Agreement for the purposes of compliance with RCW 39.34.030 for each party's respective actions in performance of this Agreement.

b. Governing Law. The laws of the State of Washington, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to this Agreement.

c. Venue. The parties shall bring any litigation arising out of or relating to this Agreement only before the Snohomish County Superior Court.

d. Complete Agreement. This Agreement constitutes the entire agreement of the parties relating to the subject matter of this Agreement. This Agreement supersedes and replaces all other written or oral agreements thereto.

e. Amendment. No amendment to this Agreement will be effective unless in writing and signed by the Mayor of the City and by the authorized representatives of the District.

f. Waiver. No waiver of satisfaction of any condition or nonperformance of an obligation under this Agreement will be effective unless it is in

writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or nonperformance of any other obligation.

g. Severability. If any provision of this Agreement is unenforceable to any extent, the remainder of this Agreement, or the application of that provision to any persons or circumstances other than those as to which it is held unenforceable, will not be affected by that unenforceability and will be enforceable to the fullest extent permitted by law.

h. Notice. For a notice under this Agreement to be valid, it must be in writing and the sending party must use one of the following methods of delivery: (A) personal delivery to the address stated below; (B) first class postage prepaid U.S. Mail to the address stated below; or (C) nationally recognized courier to the address stated below, with all fees prepaid.

Notice to City	Notice to District
City of Everett Director, Planning and Community Development 2930 Wetmore Avenue, Suite 8A Everett, WA 98201	Mukilteo School District Attn: Business Office 9401 Sharon Drive Everett, Washington 98204

A party may change its address by delivering written notice to the other party of the new address.

i. Attorney's Fees and Costs. The prevailing party in any action brought to enforce any obligations under this Agreement shall be entitled to recover from the non-prevailing party or parties an amount equal to the reasonable attorney's fees and costs incurred by the prevailing party, including without limitation any costs incurred on appeal or in any bankruptcy proceeding.

j. No Third-Party Beneficiaries. The provisions of this Agreement are for the sole benefit of the parties to this Agreement. No other persons have any rights or remedies under this Agreement.

k. Compliance with the Washington State Public Records Act. The parties acknowledge they are subject to the Public Records Act, chapter 42.56 RCW. Both parties shall cooperate with each other so that each may comply with all of its obligations under the Public Records Act.

l. Recording of this Agreement. This Agreement shall be recorded or otherwise made available to the public in accordance with RCW 39.34.040.

m. Survival. The following Sections survive termination or expiration of this Agreement: Sections 7 and 8.

The parties have executed this Agreement as of the date first above written.

CITY OF EVERETT

By: _____
Ray Stephanson,
Mayor

DISTRICT

By: _____
Dr. Marci Larsen,
Superintendent

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

Agreement

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Interlocal Agreement with the Mukilteo School District regarding school impact fee collection

3-16-16	Briefing	COUNCIL BILL #	
	Proposed Action	Originating Dept.	Planning
	Consent	Contact Person	Allan Giffen
3-23-16	Action	Phone Number	(425) 257-8725
	First Reading	FOR AGENDA OF	March 16, 2016
	Second Reading		March 23, 2016
	Third Reading		
	Public Hearing		

Initialed by:
Department Head
CAA
Council President

Location	Preceding Action	Attachments	Department(s) Approval
None	Ordinance No. 3396-14 passed August 13, 2014	Interlocal Agreement	Planning, Legal, Accounting, Building

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

Ordinance No. 3396-14 changed the way Everett collects school impact fees. Everett now uses a system based upon the Growth Management Act capital facilities plans prepared by school districts and approved through the county-wide Snohomish County School Districts Capital Facilities Plan.

The ordinance requires each participating school district to enter into an agreement with the City for reimbursement of the actual administrative costs of assessing, collecting, and handling fees for the district. The attached Interlocal Agreement establishes the process through which the City will collect impact fees for the Mukilteo School District.

RECOMMENDATION (Exact action requested of Council):
Authorize Mayor to sign the Interlocal Agreement with the Mukilteo School District regarding school impact fee collection.

Council Approved 5-0 3/23/16