

RESOLUTION NO. 20-1378

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT WITH THE KENT SCHOOL DISTRICT RELATING TO OPERATION AND ADMINISTRATION OF THE SCHOOL IMPACT FEE PROGRAM

WHEREAS, Chapter 3.70 Black Diamond Municipal Code (BDMC) and Chapters 82.02 and 36.70A RCW authorize the City to impose and collect impact fees on development activity as part of the financing for, among other things, new public school capital facilities; and

WHEREAS, as a condition of the City's adoption of a school impact fee applicable to new development within a particular school district, BDMC 3.70.030 requires the district and the City to execute an interlocal agreement (ILA) governing the operation of the impact fee program for that district and describing the parties' relationship and liabilities thereunder; and

WHEREAS, the City Council desires to enter into the ILA with Kent School District attached to this Resolution as Exhibit A;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. Pursuant to Chapter 39.34 RCW and BDMC 3.70.030, the Mayor is hereby authorized to execute an Interlocal Agreement with the Kent School District in a form substantially similar to Exhibit A attached hereto.

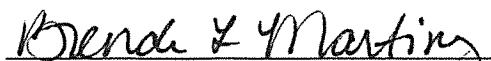
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 20th DAY OF AUGUST, 2020.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:


Brenda L. Martinez, City Clerk

**INTERLOCAL AGREEMENT
BY AND BETWEEN
THE CITY OF BLACK DIAMOND, WASHINGTON
AND
THE KENT SCHOOL DISTRICT**

THIS AGREEMENT is entered into this ___ day of _____, 2020, by and between the City of Black Diamond (hereinafter "City") and the Kent School District (hereinafter "District").

WHEREAS, the Washington State Legislature passed the Growth Management Act, Chapter 36.70A RCW, and Chapter 82.02 RCW (hereinafter "Act"), which authorizes the imposition of impact fees on development activity as part of the financing for public facilities, which financing must provide for a balance between impact fees and other sources of public funds; and

WHEREAS, the Act permits the collection and expenditure of impact fees only for public facilities which are addressed by a capital facilities element of a comprehensive land use plan adopted under the Act; and

WHEREAS, the District has prepared a Capital Facilities Plan, and authorization to collect and expend fees is contingent upon the City adopting the District's Capital Facilities Plan as part of the City's Comprehensive Plan, all as required by RCW 36.70A.070, and on the Plan's adherence with the statutory requirements of the Act; and

WHEREAS, the City has adopted Ordinance No. 20-1146 (the "school impact fee ordinance"), which describes the features of the school impact fee program, and allows the District to receive and expend school impact fees in conformance with the Act; and

WHEREAS, the City and the District enter into this Interlocal Agreement pursuant to Chapter 39.34 RCW, for the purposes of setting forth the duties and responsibilities of the parties with regard to the school impact fee program;

NOW, THEREFORE, in consideration of the mutual promises herein, the parties agree as follows:

I. RESPONSIBILITIES OF THE DISTRICT

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

A. On or before July 1st of each calendar year, submit to the City a six (6) year Capital Facilities Plan, or an update of the previously adopted Plan, together with an impact fee schedule which meets the requirements of the Act and the school impact fee ordinance.

- B. Establish and maintain impact fee accounts as required by RCW 82.02.070.
- C. Properly expend and account for impact fees as required in RCW 82.02.050(4) and (5), and 82.02.070(2) and (3).
- D. Prepare and submit to the City on or before July 1 of each calendar year a report showing the source and amount of all moneys collected, earned or received, and all system improvements that were financed in whole or in part by impact fees during the preceding calendar year, together with all information necessary to allow the City to meet all of the requirements of RCW 82.02.070(1).
- E. Encumber and expend impact fees as provided in RCW 82.02.070(3), and where the District has extraordinary and compelling reasons for holding school impact fees for longer than ten years after receipt, the District shall identify such reasons in written findings to the City Council.
- F. On behalf of the City, notify property owners of refunds available under RCW 82.02.080.
- I. Make timely payments of refunds due under RCW 82.02.080, together with any interest which may be due thereon.
- G. Review all covenants and declarations of restrictions for form, as these documents are required to maintain exemptions from payment of impact fees.
- H. Maintain all accounts and records necessary to ensure compliance with this Agreement, the school impact fee ordinance, and all other applicable law.

II. RESPONSIBILITIES OF THE CITY

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

- A. Timely review and determine what, if any, action to take on the District's annually updated Capital Facilities Plan and revised impact fee schedule.
- B. Be responsible for the following aspects of the impact fee program:
 - 1. Determine, pursuant to the school impact fee ordinance, whether or not a specific residential development activity in the City is exempt from payment of fees;
 - 2. Notify residential development applicants of the requirement to pay school impact fees based on the impact fee schedule adopted by the City pursuant to the school impact fee ordinance;

3. Calculate and assess the fee amount for any non-exempt residential development activity, based upon the schedule of fees adopted by the City pursuant to the school impact fee ordinance; and
4. Establish and maintain school impact fee accounts pursuant to RCW 82.02.070 so that impact fees can be transferred to the District on a monthly basis.

C. Amend, update, and maintain its Comprehensive Plan and development regulations and the school impact fee ordinance at all times as the City determines is necessary to permit the District to continue collecting school impact fees.

D. When City applications for development activity have been submitted, enforce covenants or declaration of covenants and restrictions, where the same have been executed as a condition of exemption from school impact fees. When such applications have not been submitted, the City shall advise the District of any potential enforcement action, and the District shall determine whether to request that the City take enforcement action. If the District requests that the City take enforcement action, the District shall reimburse the City for the City's cost of enforcement.

E. Provide a consolidated appeal process, consistent with RCW 82.02.070(5), by which an aggrieved party may appeal or otherwise contest the impact fee or independent fee calculation.

III. AUDIT

A. The District's records and documents with respect to all matters covered by the school impact fee ordinance or this Agreement are subject to inspection, review or audit by the City or an appropriate state agency.

B. 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 authorized officers, employees, agents or representatives to have full access to and the right to examine, audit, and make excerpts or transcripts of, during normal business hours, all of the District's records with respect to all matters covered by the school impact fee ordinance or this Agreement. The City shall provide fifteen (15) days' advance written notice of fiscal audits to be conducted.

IV. INDEMNIFICATION AND HOLD HARMLESS

A. The District shall, at its own cost and expense, protect, defend, indemnify, and hold harmless the City, its officers, employees, and agents, from any and all costs, claims, suits, judgments or awards of damages, including attorney fees, 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, performance of the duties set forth in Section I of this Agreement, or compliance with the terms of the school impact fee ordinance, as currently

in effect or subsequently amended. By way of example, and not of limitation, the District shall protect, defend, indemnify, and hold harmless the City, its officers, employees, and agents, from any and all costs, claims, suits, judgments, or awards of damages arising out of or in any way resulting from the District's (by its officers, employees, agents, or representatives) negligent or intentional acts or omissions; any liability arising from an audit of the District's impact fee account; or any failure for any reason to comply with the terms of this Agreement, the terms of the school impact fee ordinance, or applicable law, all as may be amended from time to time.

B. The District further agrees that the District shall, at its own costs and expense, protect, defend, indemnify, and hold harmless the City, its officers, employees, and agents from any and all costs, claims, suits, judgments, or awards of damages, including attorney fees, arising out of or in any way resulting from the District's failure to refund impact fees, or interest on such 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 City's attorney's fees or costs incurred after such offer to defend is made.

C. The District's duties to the City under this Section shall not be diminished or extinguished by the prior termination of this Agreement pursuant to Section V.

D. Except as provided in paragraphs A, B and C, the City shall, at its own cost and expense, protect, defend, indemnify and hold harmless the District, its officers, employees, or agents, from any and all costs, claims, suits, judgments or awards of damages, including attorney fees, arising out of or in any way resulting from the acts or omissions of the City, its officers, employees or agents, relating to the City's implementation of the school impact fee program or performance of the duties set forth in Section II of this Agreement; provided, however, that if the City offers to defend, the City shall not be liable for any of the District's attorney's fees or costs incurred after such offer to defend is made; and provided further, however, that the District shall promptly refund any fees as required by a final court order including payment of any pre- or post-judgment interest. The parties agree that the City shall bear no liability for any costs, claims, suits, judgments or awards of damages, including attorney fees, arising out of or in any way relating to information provided by the District and relied upon by the City in the adoption of a school impact fee ordinance or any subsequent revision to the fee schedule, and the City shall not be required to defend any appeal or challenge to the District's information, data, use of school impact fees, calculation or formula for calculation of fees, or decisions on reconsideration/appeal.

E. The City's duties to the District under this Section shall not be diminished or extinguished by prior termination of this Agreement pursuant to Section V.

V. TERMINATION

A. The District's authorization to receive and collect school impact fees under this Agreement may be terminated without cause by the City, in whole or in part, at any time, but only upon the repeal or invalidation of the school impact fee ordinance. If the City repeals and does not replace the school impact fee ordinance, or if the school impact fee ordinance is invalidated by a final, nonappealable decision of a court of competent jurisdiction, 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. The District no longer retains unexpended or unencumbered impact fees and interest earned thereon.

The obligations under Section IV, Indemnification, are continuing and shall not be diminished or extinguished by the termination of this Agreement.

B. The District shall, upon the repeal of the school impact fee ordinance and/or termination of this Agreement, either properly expend or refund any remaining unexpended or unencumbered impact fees together with interest earned thereon pursuant to Chapter 82.02 RCW.

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 any obligations, terms and conditions set forth in this Agreement are breached by the other party.

VI. MODIFICATION

No changes or modifications of this Agreement are valid or binding upon either party unless such changes or modifications are in writing and executed by both parties.

VII. INTEGRATION

This Agreement, together with the school impact fee ordinance, contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement bind either party.

VIII. SEVERABILITY

In the event that 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 OF OTHER PARTIES

It is understood that this Agreement is solely for the benefit of the parties hereto and conveys no right to any other party.

X. DISPUTES

Venue and jurisdiction for any dispute concerning the interpretation, performance, or breach of this Agreement lie exclusively in King County Superior Court, and the substantially prevailing party is entitled to recover its costs and reasonable attorney fees.

XI. 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 District's Board of Directors, the Clerk of the City of Black Diamond, and the King County Recorder.

XII. ADMINISTRATION

A. The City's representative for purposes of administering this Agreement is the Mayor or his/her designee.

B. The District's representative for purposes of administering this Agreement is the Superintendent or his/her designee.

XIII. WAIVER OF DEFAULT

Waiver of any default in the performance of this Agreement is not a waiver of any subsequent default. Waiver or breach of any provision of the Agreement is not a waiver of any other or subsequent breach and does not constitute a modification of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date and year set forth below.

<p>THE CITY OF BLACK DIAMOND</p> <p>By _____ Carol Benson Its <u>Mayor</u></p>	<p>KENT SCHOOL DISTRICT</p> <p>By _____ Its _____</p>
<p>APPROVED AS TO FORM: OFFICE OF THE CITY ATTORNEY</p> <p>_____</p>	<p>APPROVED AS TO FORM: SCHOOL DISTRICT ATTORNEY</p> <p>_____</p>
<p>ATTEST/AUTHENTICATED:</p> <p><u>Brenda L. Martiny</u> City Clerk</p>	

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that (he/she) signed this
instrument, on oath stated that (he/she) was authorized to execute the instrument and
acknowledged it as the _____ of the City of Black Diamond to be the free and
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Commission expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that (he/she) signed this
instrument, on oath stated that (he/she) was authorized to execute the instrument and
acknowledged it as the _____ of the Kent School District to be the free and voluntary
act of such party for the uses and purposes mentioned in the instrument.

Dated: _____.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Commission expires _____