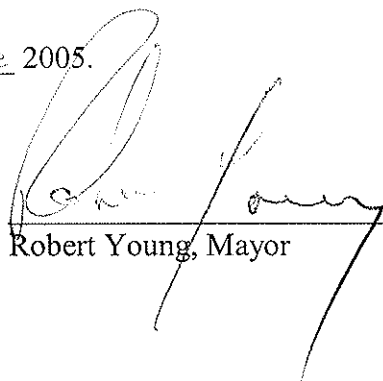


RESOLUTION NO. 1459

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING AN INTERLOCAL AGREEMENT WITH THE WHITE RIVER SCHOOL DISTRICT FOR COLLECTION OF SCHOOL IMPACT FEES.

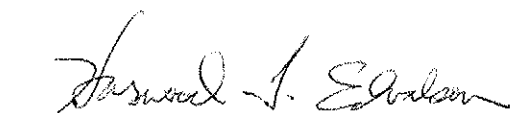
The City Council of the City of Bonney Lake, Washington, does hereby resolve that the Mayor is authorized to sign the attached INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF BONNEY LAKE, WASHINGTON AND THE WHITE RIVER SCHOOL DISTRICT.

PASSED by the City Council this 28th day of June 2005.



Robert Young, Mayor

ATTEST:



Harwood T. Edvalson, City Clerk

APPROVED AS TO FORM:



James Dionne, City Attorney

**INTERLOCAL AGREEMENT
BY AND BETWEEN
CITY OF BONNEY LAKE, WASHINGTON
AND
WHITE RIVER SCHOOL DISTRICT NO. 416**

THIS AGREEMENT is entered into this 8th day of June, 2005, by and between the City of Bonney Lake (hereinafter "City") and the White River School District No. 416 (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. 1122 which provides for the collection, receipt and expenditure of school impact fees in conformance with the Act and the City has adopted by reference the District's Capital Facilities Plan as part of the City's Comprehensive Plan; and

WHEREAS, the City and the District have entered 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 Ordinance No. 1122 and all future amendments thereto (collectively hereinafter "School Impact Fee Ordinance");

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. Annually, as designated by the City, 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 and Section 19.08.080(B) of the School Impact Fee Ordinance, and collect fees and provide the City with required notices pursuant to Section 19.08.080(B) of the School Impact Fee Ordinance.

C. Properly expend and account for impact fees as required in RCW 82.02.050(4) and 82.02.070(2).

D. Annually, as designated by the City, prepare 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 only as provided in RCW 82.02.070(3), and where the District has extraordinary and compelling reasons for noncompliance with this statute, the District shall identify such reasons in written findings to the City Council.

F. Make timely payments of refunds due under RCW 82.02.080, together with any interest which may be due thereon.

G. Review and approve as to form all covenants and declarations of restrictions, 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 Chapter 82.02 RCW.

II. RESPONSIBILITIES OF THE CITY

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

A. Be responsible for the following aspects of the school impact fee program:

1. Determine, pursuant to the School Impact Fee Ordinance, whether or not residential development activity in the City is exempt from payment of fees;
2. Ensure that applicants for residential development have paid school impact fees to the District based on the fee schedules adopted by the City pursuant to the School Impact Fee Ordinance.

B. Amend, update, and maintain its Comprehensive Plan, including adoption of or incorporation by reference the District's Capital Facilities Plan, and development regulations and the School Impact Fee Ordinance at all times in order to permit the District to continue collecting school impact fees; provided, that all amendments to the City's Comprehensive Plan shall be consistent with statutory and code processes for such amendments; and provided further, that the

City shall not be obligated to adopt a District Capital Facilities Plan if the City determines that it is not consistent with law.

C. Enforce covenants or declarations of covenants and restrictions within the City which have been executed and recorded as a condition of an exemption of a development activity from school impact fees. When enforcement action is appropriate, the City shall advise the District of such potential enforcement action, and the District shall determine whether to request that the City take enforcement action.

III. INDEMNIFICATION, HOLD HARMLESS, AND WAIVER

A. Except with respect to: (i) any negligence of the City relating to the adoption, administration or collection of the School Impact Fee Ordinance, (ii) the City's failure to properly adopt the School Impact Fee Ordinance in accordance with any State or City notice requirements, (iii) or the City's failure to adopt or incorporate by reference the District's Capital Facilities Plan into the City's Comprehensive Plan, 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, judgments or awards of damages, including attorney fees, arising out of or in any way resulting from the School Impact Fee Ordinance or amendments thereto, or performance of the duties set forth in Section I of this Agreement.

B. 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 IV.

IV. EFFECTIVE DATE AND TERMINATION

A. Only upon the repeal or invalidation of the School Impact Fee Ordinance, shall this Agreement be terminated. All other obligations under this Agreement shall remain in effect until both of the following conditions shall 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 III, Indemnification, shall be 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 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 obligation, terms and conditions set forth in this Agreement are breached by the other party.

V. MODIFICATION

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

VI. 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 shall be deemed to bind either party.

VII. 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.

VIII. 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.

IX. DISPUTES

Jurisdiction of any dispute arising under this Agreement shall be in Pierce County Superior Court, and the substantially prevailing party shall be entitled to recover its costs and reasonable attorney fees.

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 become effective following occurrence of the following:

- A. Adoption of the School Impact Fee Ordinance by the City;
- B. Approval of this Agreement by the official action of the governing bodies of each of the parties hereto;
- C. Execution of this Agreement by the duly authorized representative of each of the parties hereto; and
- D. The filing of the Agreement by the District with the following public officials:

1. The City Clerk of the City of Bonney Lake;
2. The Secretary of the Board of Directors of the White River School District; and
3. The Pierce County Auditor.

XII. ADMINISTRATION

A. The City's representative for purposes of administering this Agreement is the Director of Planning and Community Development or his/her designee whose address is c/o City Hall, 19306 Bonney Lake Boulevard, Bonney Lake, WA 98390-0944

B. The District's representative for purposes of administering this Agreement is the Superintendent or his/her designee whose address is P.O. Box 2050, Buckley, WA 98321.

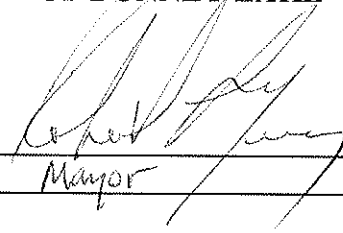
XIII. WAIVER OF DEFAULT


Waiver of any default in the performance of this Agreement 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 this Agreement.

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

CITY OF BONNEY LAKE

**WHITE RIVER SCHOOL DISTRICT
NO. 416**

By 
Its Mayor

By 
JAY HAMBLEY
Its Superintendent

APPROVED AS TO FORM:

APPROVED AS TO FORM:

J. Dionne, City Attorney

_____, School District Attorney

