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

THIS AGREEMENT is entered into in duplicate on this 29th day of, June by and between the City of Maple Valley ("City") and Tahoma School District 409 ("District").

RECITALS

WHEREAS, the Washington State Legislature passed the Growth Management Act of 1990 now codified at Ch.36.70A RCW, and RCW 82.02.050 - .110 et. seq. (the "Act"), which authorizes the collection of impact fees on development activity to provide public school facilities to serve new growth and 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, in 1997 the District requested that the City, on behalf of the District, implement a fee program based on the Act; and

WHEREAS, the City Council adopted Ordinance No. 0-97-044 (now codified at Ch. 16.15 MVMC) for the purpose of implementing the Act and authorizing the collection of school impact fees; and

WHEREAS, the District annually prepares a Capital Facilities Plan in compliance with the Act for adoption by the District's School Board; and

WHEREAS, the District annually provides a copy of its adopted Capital Facilities Plan to the City for consideration and adoption into the City's Capital Facilities Plan; and

WHEREAS, following the City Council's adoption of Ordinance 0-97-044, and after incorporating the District's Capital Facilities Plan into the City's Capital Facilities Plan the City began annually collecting impact fees upon certain new residential developments on behalf of the District; and

WHEREAS, the City and the District desire to enter into this new Agreement pursuant to and in accordance with the Interlocal Cooperation Act, Chapter 39.34 RCW, for the purposes of administrating and distributing the authorized school impact fees.

TERMS

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

I. GENERAL AGREEMENT

A. The City and 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:

A. Annually submit to the City a six-year capital facilities plan which shall comply with 16.15.060.E, or provide an update of a previously adopted plan, and submit all other requirements of 16.15.060 on or before August 1 of each year.

B. Authorize the City, as Treasurer for the District, to establish a School Impact Fee Account into which school impact fees shall be deposited after collection.

C. Expend impact fee revenues provided to the District under this Agreement, and all interest proceeds on such revenues, solely for expenditures authorized by RCW 82.02.090(7), as written or hereafter amended, and as set forth in the adopted Capital Facilities Plan.

D. Prepare an annual report in accordance with the requirements of RCW 82.02.070(1) and MVMC 16.15.060.D and .130 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 provided to the City no later than August 1 of each year for the preceding calendar year.

E. Refund impact fees and interest earned on impact fees when a refund is required pursuant to RCW 82.02.080, as written or hereafter amended.

F. Maintain accounts and records necessary to ensure proper accounting for all impact fee funds and compliance with this Agreement, the Act, and Chapter 16.15 MVMC.

G. Comply with King County Code 21A.28.152 et. seq., and comply with all responsibilities therein.

III. RESPONSIBILITIES OF THE CITY

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

A. Timely review and take action on the District's updated Capital Facilities Plan and the District's impact fee schedule, provided that the District has complied with Section II.A., D. and G., herein.

B. Assess and collect impact fees pursuant to MVMC 16.15.080 and .090, as written or hereafter amended.

C Deposit promptly, and no less than monthly, all impact fees and interest collected on behalf of the District in the appropriate accounts established by the District.

D. Determine whether applicants are excluded from the application of the impact fee pursuant to MVMC 16.15.120, as written or hereafter amended.

IV. GENERAL TERMS

A. This Agreement shall be effective when approved by the governing body of both parties. The execution of this Agreement shall serve to terminate the prior agreement between the parties pertaining to school impact fees, "Interlocal Agreement for the Collection, Distribution, and Expenditure of School Impact Fees," executed in 1997.

B. It is recognized that amendments to this Agreement may become necessary, and such amendment shall become effective only when the governing body of each party has approved a written addendum to this Agreement.

C. The parties acknowledge that, except as otherwise specifically provided for herein, the City shall in no event be responsible for the payment of any funds to the District, except for impact fees actually collected for the District.

D. This Agreement shall remain in effect until terminated in writing.

E. No separate legal or administrative entity is created under this Agreement.

F. No financing structure or budget is hereby created under this Agreement.

G. No real or personal property will be acquired under this Agreement.

H. This Agreement will be administered by the City Manager for the City of Maple Valley, or his/her designee.

V. AUDIT

A. Both party's records and documents with respect to all matters covered by this Agreement shall be subject to inspection, review, or audit by the other party or by 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

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 all matters covered by this Agreement. The City and/or any of its 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 City will give fifteen days advance notice to the District office of fiscal audits to be conducted.

C. The results and records of said audit shall be maintained and disclosed in accordance with Chapter 42.56 RCW.

VI. PARTICIPATION IN DEFENSE

In the event that the City and/or District is named in a cause of action relating to Ch. 16.15 of the Maple Valley Municipal Code, or any amendment thereto, the City and District agree to consult with each other as soon as practicable. The intent of this Section is to encourage collaborative action among the parties in the defense of said action. Unless otherwise agreed, the participation of the City and the District shall be as follows.

A. In the event that the City is required to defend the legality of Ch. 16.15 MVMC, the City may tender its defense to the District, and the District shall then defend said action, provided that, if the District offers to defend said action, the District shall not be liable for any of the City's attorney's fees or litigation costs incurred after such offer to defend is made and rejected by the City; provided further that, if the City decides not to tender the defense, the City shall be liable for its own attorney's fees and all costs of litigation.

VII. HOLD HARMLESS

A. The District shall, at its 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, arising out of or in any way resulting from the acts or omissions of the District, its officers, employees, or agents, relating in any way to the City school impact fee program. By way of example, and not of limitation, of the foregoing, the District shall protect, defend, indemnify, and hold harmless the City, 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 (by its officers, employees, agents, or representatives) negligent acts or omissions; intentional acts or omissions; any liability arising from an audit of the District's impact fee account; or failure for any reason to comply with the terms of this Agreement, the terms of the Act, or the terms of Ch. 16.15 MVMC, all as may be amended from time to time.

B. The District further agrees that the District shall protect, defend, indemnify, and hold harmless the City, 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 the 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 VIII.

D. The City shall, at its own cost and expense, protect, defend, indemnify, and hold harmless the District, its officers, employees, and agents from that portion of any costs, claims, judgments, or awards of damages that exceed the amount of impact fees the City has collected on behalf of the District resulting from the City's (by its officers, employees, agents, or representatives) negligent acts or omissions; intentional acts or omissions; or failure for any reason to comply with the terms of this Agreement, the terms of the Act, or the terms of Ch. 16.15 MVMC, all as may be amended from time to time. It is the intent of this Section (VII. D.) that any liability created by the City's performance of its duties under this Agreement, the Act, or the terms of Ch. 16.15 MVMC be satisfied first out of any impact fees attributable to the activity out of which the liability arises, that have been collected by the City on behalf of the District for the particular development activity at issue, and only in the event that such impact fees collected for the particular development activity at issue are insufficient, shall the City be liable to satisfy the liability.

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

VIII. TERMINATION

A. The obligation to collect impact fees under this Agreement may be terminated without cause by the City, in whole or in part, at any time, upon written notice to the District. All other obligations under this Agreement shall remain in effect so long as the City or the District retain unexpended or unencumbered funds. The obligations under Section VII of this Agreement shall be continuing and shall not be diminished or extinguished by the termination of this Agreement.

B. The City, as the official fiscal agent, shall have the authority to ensure that upon termination of this Agreement, any remaining unexpended or unencumbered funds 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 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.

IX. 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.

X. 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.

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 clerk of the City, the clerk of the District, and recorded with the King County Auditor's Office.

XII. ADMINISTRATION

A. The City's representative shall be:
David W. Johnston
City Manager
22017 SE Wax Rd
PO Box 320
Maple Valley, WA 98038
425-413-8800

B The Tahoma School District representative shall be:
Michael Maryanski
Superintendent
25720 Maple Valley Highway
Maple Valley, WA 98038
425-413-3403

XIII. 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 City, which shall be attached to the original Agreement.

CITY OF MAPLE VALLEY

David W. Johnston
City Manager

TAHOMA SCHOOL DISTRICT

Michael Maryanski
Superintendent

ATTEST:

Shaunna Lee-Rice
City Clerk

APPROVED AS TO FORM:

Christy A. Todd, City Attorney

APPROVED AS TO FORM:

Tahoma School District Legal Counsel