

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

THIS AGREEMENT is entered into this 13 day of October, 2015 ("Effective Date") by and between the City of Kent, a Washington municipal corporation ("City"), and the Kent Fire Department Regional Fire Authority, a Washington municipal corporation ("KFDRFA").

RECITALS

1. The Washington State Legislature passed the Growth Management Act of 1990 (GMA) now codified at Chapter 36.70A RCW, and Chapter 82.02 RCW (the "Act"), which authorizes the imposition and collection of impact fees on development activity as part of the financing for public facilities, including fire protection facilities, in order to serve new growth; and
2. The Act requires that financing for these public facilities must provide for a balance between impact fees and other sources of public funds and cannot rely solely on impact fees; and
3. Impact fees are a critical form of funding necessary for maintaining adequate public fire protection facilities concurrently with development; and
4. The Act allows the collection and expenditure of impact fees only for public facilities that are addressed by a capital facilities element of a comprehensive land use plan; and
5. The KFDRFA prepared a Capital Facilities Plan in compliance with the Act for adoption by the KFDRFA's Governance Board, and authorization to collect and expend fees is contingent upon the City's adoption of the KFDRFA's Capital Facilities Plan ("CFP") as part of the City's Comprehensive Plan, as required by the GMA and the Plan's adherence with the statutory requirements of the Act; and
6. The KFDRFA has provided a copy of its adopted CFP to the City for consideration and adoption into the City's Capital Facilities Element of the City's Comprehensive Plan; and
7. The City Council has adopted Chapter 12.15 of the Kent City Code (the "fire impact fee ordinance"), which describes the features of the fire impact fee program, and allows the KFDRFA to receive and expend the fire impact fees in conformance with the Act; and
8. The City and the KFDRFA desire to 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 fire impact fee program.

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

AGREEMENT

The City and the KFDRFA agree to comply with the terms of this Agreement, which shall govern the collection, distribution, expenditure and refunding of fire impact fees.

I. RESPONSIBILITIES OF THE KFDRFA

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

A. Annually submit to the City a six-year capital facilities plan which shall comply with KCC 12.15.060, together with an impact fee schedule which meets the requirements of the Act and the fire impact fee ordinance, or provide an update of a previously adopted plan, and submit all other requirements of KCC 12.15.060 on or before September 1 of each year.

B. Assist the City if any fire impact fees are challenged.

C. Authorize and assist the City to establish and maintain a Fire Impact Fee Account into which fire impact fees shall be deposited after collection.

D. Expend impact fee revenues provided to the KFDRFA under this Agreement, and all interest proceeds on such revenues, solely for expenditures authorized by RCW 82.02.050(4) (82.02.050(5) effective September 1, 2016) and RCW 82.02.070(2).

E. Prepare an annual report in accordance with the requirements of RCW 82.02.070(1), KCC 12.15.060 and KCC 12.15.120, 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 September 1 of each year for the preceding calendar year.

F. Refund impact fees and interest earned on impact fees when a refund is required pursuant to RCW 82.02.080.

G. Maintain accounts and records necessary to ensure proper accounting for all impact fee funds and compliance with this Agreement, the Act, and Chapter 12.15 KCC.

H. In the event the RFA has extraordinary and compelling reasons for encumbering or expending impact fees as provided in RCW 82.02.070(3), the RFA shall identify such findings in writing to the City Council.

I. Review all covenants and declaration of restrictions for form, as these documents are required to maintain exemptions from payment of fire impact fees.

J. Maintain all accounts and records necessary to ensure compliance with

this Agreement, the fire impact fee ordinance, and all other applicable laws.

II. RESPONSIBILITIES OF THE CITY

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

- A. Timely review and take action on the KFDRFA's updated CFP and the KFDRFA's impact fee schedule, provided that the KFDRFA has complied with the terms of this Agreement.
- B. Assess and collect fire impact fees pursuant to Chapter 12.15 KCC.
- C. Deposit promptly, and no less than monthly, all fire impact fees collected on behalf of the KFDRFA in the appropriate accounts established by the KFDRFA.
- D. Impose and collect an administrative fee for the collection of fire impact fees, if established by Council resolution, which administrative fees shall belong solely to the City.
- E. Establish and maintain fire impact fee accounts pursuant to RCW 82.02.070, so that impact fees may be transferred to the KFDRFA on a monthly basis.
- F. Develop, in cooperation with the KFDRFA, a report on the fire impact fee account as required by RCW 82.02.070(1) detailing the fees received and the system improvements financed in whole or part by the fees.

III. GENERAL TERMS

- A. 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.
- B. The parties acknowledge that, except as otherwise specifically provided for herein, the City shall in no event be responsible for the payment of any impact fees to the KFDRFA, except for impact fees actually collected for the KFDRFA.
- C. This Agreement shall remain in effect until terminated in writing by mutual agreement of the parties or as provided in Section VI.
- D. No separate legal or administrative entity is created under this Agreement.

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

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

G. This Agreement will be administered by the Chief Administrative Officer for the City of Kent, or his/her designee.

IV. AUDIT

A. Both parties' 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 KFDRFA agrees to cooperate with any monitoring or evaluation activities conducted by the City that pertain to the subject of this Agreement. The KFDRFA 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 KFDRFA'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 KFDRFA of fiscal audits to be conducted.

C. The results and records of such audits shall be maintained and disclosed in accordance with Chapter 42.56 RCW and Chapter 1.05 KCC.

V. INDEMNIFICATION AND HOLD HARMLESS

A. The KFDRFA 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, arising out of or in any way resulting from the acts or omissions of the KFDRFA, its officers, employees or agents, relating to the KFDRFA's implementation of the fire impact fee program, performance of the responsibilities set forth in Section I of this Agreement, or compliance with the terms of Chapter 12.15 KCC, all as may be amended from time to time. This Indemnification by the KFDRFA of the City shall include, but not be limited to:

1. The KFDRFA's responsibility to refund any fees with interest, which are determined by a court of competent jurisdiction to have been improperly paid, regardless of whether the City erroneously required the fee amount;

2. The KFDRFA's agreement not to impose any liability on the City for the City's failure to collect the proper fee amount or any fee from a developer conducting any development activity, provided that the City shall make reasonable attempts to collect such fee.

B. The KFDRFA 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, resulting from a challenge to the legality of any provision of Chapter 12.15 KCC as applied to a developer engaging in a development activity located within the KFDRFA's boundaries; provided, however, that if the KFDRFA offers to defend the City, the KFDRFA shall not be liable for any of the City's attorney's fees or incidental litigation expenses incurred after such offer to defend is made; provided further, that if the KFDRFA defends the City, the KFDRFA shall be authorized to settle any such challenge.

C. The KFDRFA further agrees that the KFDRFA 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, judgments, or awards of damages arising out of or in any way resulting from the KFDRFA'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 KFDRFA whether or not the KFDRFA's determination was made in good faith; provided however, that if the KFDRFA offers to defend, the KFDRFA shall not be liable for any of the City's attorney's fees or incidental litigation expenses incurred after such offer to defend is made; provided further, that if the KFDRFA defends the City, the KFDRFA shall be authorized to settle any such challenge.

D. The KFDRFA's duties to the City under this Section shall not be diminished or extinguished by the prior termination of this Agreement pursuant to Section VI.

E. 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 KFDRFA, its officers, employees, or 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 City, its officers, employees or agents, relating to the City's implementation of the fire impact fee program, performance of the responsibilities set forth in Section II of this Agreement, or the terms of Chapter 12.15 KCC, all as may be amended from time to time; provided however, that if the City offers to defend, the City shall not be liable for any of the KFDRFA's attorney's fees or incidental litigation expenses incurred after such offer to defend is made, and provided further that the KFDRFA shall promptly refund any fees as required by a final court order including payment of any pre- or post judgment interest.

F. The City's duties to the KFDRFA under this Section shall not be diminished or extinguished by prior termination of this Agreement pursuant to Section VI.

VI. TERMINATION

A. The term of this Agreement shall commence upon the Effective Date. The KFDRFA's authorization to receive 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 Chapter 12.15 KCC. All other obligations under

this Agreement shall remain in effect until both of the following conditions have been satisfied:

1. The City or the KFDRFA provides written notice that this Agreement is being terminated; and
2. Neither the KFDRFA, nor the City on behalf of the KFDRFA, retains unexpended or unencumbered impact fees and interest earned thereon.

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

B. Upon termination of this Agreement, the party holding any impact fees collected under this Agreement shall ensure that any remaining unexpended or unencumbered impact fees and interest earned thereon are either properly expended or refunded 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 obligations, terms, and conditions set forth in this Agreement are breached by the other party.

VII. 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.

VIII. 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.

IX. 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. Jurisdiction of any dispute arising under this Agreement shall be in King County Superior Court, and each party shall be responsible for its own costs and attorneys' fees. This Agreement shall be filed with the clerk of the City, the clerk of the KFDRFA, and may be recorded with the King County Auditor's Office or posted on the websites of the parties.

X. ADMINISTRATION

The City's representative shall be:

Derek Matheson
Chief Administrative Officer
220 4th Ave S
Kent, WA 98032
253-856-5700

The KFDRFA's representative shall be:

Jim Schneider
Fire Chief
24611 116th Ave SE.
Kent, WA 98030
253-856-4300

XI. 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 parties, which shall be attached to the original Agreement.

XII. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

CITY OF KENT

KENT FIRE DEPARTMENT REGIONAL
FIRE AUTHORITY



Suzette Cooke
Mayor
Date: 10/13/15



Jim Schneider
Fire Chief
Date: 10.07.2015

ATTEST:

A handwritten signature in blue ink, appearing to read "Ronald Moore MMC", written over a horizontal line.

Ronald Moore
City Clerk

Approved as to form:

A handwritten signature in blue ink, appearing to read "Tom Brubaker", written over a horizontal line.

Tom Brubaker
City Attorney

Approved as to form:

A handwritten signature in blue ink, appearing to read "Brian Snure", written over a horizontal line.

Brian Snure
KFDRFA Attorney