

**An Interlocal Agreement  
between King County and the City of Covington  
for the Reciprocal Collection of Transportation Impact Fees**

THIS AGREEMENT is entered into by the City of Covington, a municipal corporation of the State of Washington ("the City") and King County, a political subdivision of the State of Washington ("the County").

**RECITALS**

- A. R.C.W. 82.02.050 through 82.02.100 authorize counties and cities to impose impact fees on development activities as part of the financing for public facilities, including Transportation Facilities (as defined below).
- B. The County and the City have each adopted a comprehensive plan meeting the standards of the Growth Management Act, Chapter 36.70A R.C.W., and have each adopted a transportation impact fee system that meets the standards of R.C.W. 82.02.050 through 82.02.100.
- C. The County's transportation impact fee system is referred to as its Mitigation Payment System ("MPS" or "the County System") and is codified at King County Code Chapters 14.65 and 14.75.
- D. The City's transportation impact fee system ("the City System") is authorized by Covington City Ordinance No. \_\_\_\_\_.
- E. Developments in the unincorporated areas of the County may have an impact on City Transportation Facilities.
- F. Developments in the City may have an impact on Transportation Facilities in the unincorporated areas of the County.
- G. Developments should pay a proportionate share of the cost of Transportation Facilities needed to serve new growth and development.
- H. Both the County and the City intend to collect fees for development traffic impacts on the other party's Transportation Facilities pursuant to an interlocal agreement.
- I. The parties are each authorized to enter into this Agreement pursuant to RCW Chapter 39.34 (the Interlocal Cooperation Act) and Article 11, Section 11, of the Washington State Constitution.

## AGREEMENT

NOW THEREFORE, the County and the City hereby agree:

1. Purposes of the Agreement.

1.1 To include within the County System certain City Transportation Facilities for which the County will collect transportation impact fees from developments within the unincorporated areas of the County for transfer to the City.

1.2 To include within the City System certain County Transportation Facilities for which the City will collect transportation impact fees from developments within the City for transfer to the County.

1.3 To ensure that there is an equitable means to charge developments for their impacts on City and County Transportation Facilities.

1.4 To define the procedure by which each party will assess, collect, and transfer to the other party fees for traffic impacts to the receiving party's Transportation Facilities.

2. References.

2.1 References in this Agreement to the County System shall mean the Mitigation Payment System ("MPS"), established by the County for the imposition and collection of transportation impact fees codified at King County Code Chapters 14.65 and 14.75. References to King County Code Chapters 14.65 and 14.75 mean those chapters as they now exist or are hereafter amended, or their successors.

2.2 References in this Agreement to the City System shall mean the system established by the City for the imposition and collection of transportation impact fees as authorized by Covington City Ordinance No. \_\_\_\_\_. References to Covington City Ordinance No. \_\_\_\_\_ mean that ordinance as it now exists or is hereafter amended, or its successor.

2.3 References in this Agreement to R.C.W. Sections 82.02.050 through 82.02.100 mean those sections as they now exist or are hereafter amended.

3. Definitions. In addition to the definitions contained elsewhere in the text of this Agreement, the following definitions apply.

3.1 County-Collected Fees: Transportation impact fees that the County collects from developments in unincorporated King County that have traffic impacts on selected City Transportation Facilities.

3.2 **City-Collected Fees:** Transportation impact fees that the City collects from developments in the City that have traffic impacts on selected County Transportation Facilities.

3.3 **City Project:** A growth-related (i) improvement on a City Transportation Facility or (ii) new City Transportation Facility, as described in the Capital Facilities Element of the City's Comprehensive Plan ("Plan"), as such Plan may be updated from time to time, that the City proposes and the County selects for inclusion in the County System pursuant to King County Code Chapters 14.65 and 14.75. The list of such City Projects is referred to as "the City Projects List".

3.4 **County Project:** A growth-related (i) improvement on a County Transportation Facility or (ii) new County Transportation Facility, as described in the County MPS Project List, as such list may be updated from time to time, that the County proposes and the City selects for inclusion in the City System pursuant to Covington City Ordinance No. \_\_\_\_\_. The list of such County Projects is referred to as "the County Projects List".

3.5 **Project Cost:** The estimated cost of constructing a County or City Project, including, but not limited to, the costs of design, right-of-way acquisition and construction.

3.6 **Transportation Facilities:** Arterial roads, streets and intersections, sidewalks, curb and gutter, street and road lighting systems, and traffic signals. When they are part of a capacity improvement project, transit and high occupancy vehicle facilities, and nonmotorized facilities (i.e., for bicycles and pedestrians) are also included within the definition of Transportation Facilities.

#### 4. City Responsibilities.

##### 4.1 City Projects in the County System

4.1.1 The City will give the County a list of proposed City Projects that meet the requirements for inclusion in the County System and that the City proposes for inclusion in the County System ("the Proposed City Projects List"). The initial Proposed City Projects List is an attachment (Exhibit A) to this Agreement.

4.1.2 The City will update the Proposed City Projects List on a regular basis.

4.1.3 The Proposed City Projects List will include for each Project the Project name, Project limits and total Project cost.

4.1.4 The City will provide the County with developer transportation impact data.

4.1.5 The City will expend or encumber the County-Collected Fees for City Transportation Facilities which are identified on the City Projects List and that will reasonably benefit the new development that paid such fees, in accordance with RCW 82.02.050 through

82.02.100, within six (6) years of the date when such fees were paid to the County. In the event the City does not so expend or encumber any such fees, the City will return such fees to the County, unless there exists an extraordinary and compelling reason for the fees to be held longer than six years. Such extraordinary or compelling reasons shall be identified in written findings by the City Council pursuant to RCW 82.02.070(3).

4.1.6 The City will maintain its own payment tracking system for County-Collected Fees including appropriate notations to identify special situations such as appeals, refunds, and exemptions.

4.1.7 The City will inform the County of the appropriate staff contact and address for transfer of revenues or other official contacts.

#### 4.2 County Projects in the City System

4.2.1 The City will determine which of the County's Proposed Projects will be included in the City System, pursuant to Covington City Ordinance No. \_\_\_\_\_, and will collect impact fees from developments in the City that have an impact on such County Projects.

4.2.2 The City will collect the impact fees as determined by the County, as described in Section 6.2.

4.2.3 The City will maintain its own impact fee accounts or funds as it deems appropriate for holding impact fee revenue prior to transfer to the County.

4.2.4 The City will provide the County with the following information regarding the City-Collected Fee for each development in the City that pays such a fee: (1) development name; (2) street address; (3) permit application number; (4) King County Assessor's parcel number; (5) development location by zone number; (6) total impact fee payment and amount apportioned to each party; (7) development type and size; for example, "single-family residential – 10 units;" (8) the date the fee was paid to the City; and (9) any special notations as described in Section 5.1.6.

4.2.5 The City will retain interest on City-Collected Fees while the revenues remain in the City's accounts. The City will not pay interest to the County on City-Collected Fees that are held prior to transfer.

4.2.6 Administrative appeals of City-Collected Fees will be processed through the City System's appeal procedure.

4.2.7 Refunds of City-Collected Fees will be made as follows:

4.2.7.1 If a refund includes revenues that have not yet been transferred to the County, the refund (including interest) will be paid by the City out of such revenues and will be deducted from the revenues the City transfers to the County.

4.2.7.2 If a refund includes revenues that have already been transferred to the County, the County will not be responsible to refund these monies to the City. Instead, the City will pay the refund (including interest) and will deduct a like amount from future amounts that would otherwise be transferred to the County.

4.2.7.3 If revenues that have not been transferred to the County, or that can reasonably be expected to be collected in the future, will not be sufficient to cover all or part of a refund (including interest), such as, for example, in the event this Agreement is terminated pursuant to Section 10, the County will be responsible for the shortfall.

4.2.7.4 Refunds that are ordered by a court shall be paid as described in Section 7.

4.2.7.5 The City will promptly notify the County of any refunds the City makes and the effect of such refunds on revenues to be transferred to the County.

4.2.8 The City will transfer the City-Collected Fees to the County quarterly, unless both parties agree to transfer said fees more or less frequently.

5. County Responsibilities.

5.1 County Projects in the City System

5.1.1 The County will give the City a list of proposed County Projects that meet the requirements for inclusion in the City System and that the County proposes for inclusion in the City System ("the Proposed County Projects List"). The initial Proposed County Projects List is an attachment (Exhibit B) to this Agreement.

5.1.2 The County will update the Proposed County Projects List on a regular basis.

5.1.3 The Proposed County Projects List will include for each Project the Project name, Project limits and total Project cost.

5.1.4 The County will provide the City with developer transportation impact data.

5.1.5 The County will expend or encumber the City-Collected Fees for County Transportation Facilities which are identified on the County Projects List and that will reasonably benefit the new development that paid such fees, in accordance with R.C.W. 82.02.050 through 82.02.100, within six (6) years of the date when such fees were paid to the City. In the event the County does not so expend or encumber any such fees, the County will return such fees to the City, unless there exists an extraordinary and compelling reason for the

fees to be held longer than six (6) years. Such extraordinary or compelling reasons shall be identified in written findings by the County Council pursuant to RCW 82.02.070(3).

5.1.6 The County will maintain its own payment tracking system for City-Collected Fees including appropriate notations to identify special situations such as appeals, refunds, and exemptions.

5.1.7 The County will inform the City of the appropriate staff contact and address for transfer of revenues or other official contacts.

5.2 City Projects in the County System

5.2.1 The County will determine by ordinance which of the City's Proposed Projects will be included in the County System, pursuant to King County Code Chapters 14.65 and 14.75, and will collect impact fees from developments in unincorporated King County that have an impact on such City Projects.

5.2.2 The County will determine and collect the impact fees as described in Section 6.1.

5.2.3 The County will maintain its own impact fee accounts or funds as it deems appropriate for holding impact fee revenue prior to transfer to the City.

5.2.4 The County will provide the City with the following information regarding the County-Collected Fee for each development in unincorporated King County that pays such a fee: (1) development name; (2) street address; (3) permit application number; (4) King County Assessor's parcel number; (5) development location by zone number; (6) total impact fee payment and amount apportioned to each party; (7) development type and size; for example, "single-family residential – 10 units," (8) the date the fee was paid to the County; and (9) any special notations as described in Section 4.1.6.

5.2.5 The County will retain interest on County-Collected Fees while the revenues remain in the County's accounts. The County will not pay interest to the City on County-Collected Fees that are held prior to transfer.

5.2.6 Administrative appeals of County-Collected Fees will be processed through the County System's appeal procedure.

5.2.7 Refunds of County-Collected Fees will be made as follows:

5.2.7.1 If a refund includes revenues that have not yet been transferred to the City, the refund (including interest) will be paid by the County out of such revenues and will be deducted from the revenues the County transfers to the City.

5.2.7.2 If a refund includes revenues that have already been transferred to the City, the City will not be responsible to refund these monies to the County. Instead, the County will pay the refund (including interest) and will deduct a like amount from future amounts that would otherwise be transferred to the City.

5.2.7.3 If revenues that have not been transferred to the City, or that can reasonably be expected to be collected in the future, will not be sufficient to cover all or part of a refund (including interest), such as, for example, in the event this Agreement is terminated pursuant to Section 10, the City will be responsible for the shortfall.

5.2.7.4 Refunds that are ordered by a court shall be paid as described in Section 7.

5.2.7.5 The County will promptly notify the City of any refunds the County makes and the effect of such refunds on revenues to be transferred to the City.

5.2.8 The County will transfer the County-Collected Fees to the City quarterly, unless both parties agree to transfer said fees more or less frequently.

6. Determination and Collection of Fees.

6.1 The County will determine impact fees for City Projects in the County System using the County methodology as described in King County Code Chapters 14.65 and 14.75 and using development impact data supplied by the County and the City. The County will collect such fees.

6.2 The County will determine impact fees for County Projects in the City System using the County methodology as described in King County Code Chapters 14.65 and 14.75 and development impact data supplied by the County and the City. The City will collect such fees.

7. Litigation.

In the event of litigation, each party to this Agreement will be responsible at its sole expense for defending its own codes, ordinances, and administrative decisions. If either party is ordered by the court to refund fees, the party in possession of such fees shall make such refund, and the party for whom the fees were collected shall pay any interest, costs, fees or expenses that may be ordered by the court in connection with such refund.

8. Exemptions.

8.1 The City will not collect impact fees from a development within the City having an impact on County Transportation Facilities when that development is exempt from paying impact fees under City ordinances.

8.2 The County will not collect impact fees from a development within unincorporated King County having an impact on City Transportation Facilities when that development is exempt from paying impact fees under the County Code.

9. Amendments.

Only an instrument in writing duly executed by the parties hereto may amend this Agreement.

10. Termination.

Either party may terminate this Agreement upon sixty (60) days written notification. On the effective date of the termination, the City and the County will cease collecting fees for impacts on the other party's Transportation Facilities. Any fees that have previously been collected by one party for impacts on the other party's Transportation Facilities, but not yet transferred, will be transferred to the other party in accordance with this Agreement. Refunds (including interest) that cannot be covered by fees pending transfer will be paid by the party for whom the fees that are to be refunded were collected.

11. Indemnification and Hold Harmless.

11.1 Each party shall protect, defend, indemnify and save harmless the other party, its officials, employees and agents from any and all costs, expenses, claims, actions, suits, liability, loss, judgments, attorney's fees and/or awards of damages arising out of or in any way resulting from the indemnifying party's own negligent acts or omissions in carrying out the terms of this Agreement. In the event the indemnified party incurs any costs or expenses, including attorney's fees, to enforce the provisions of this section, all such costs, expenses and fees shall be recoverable from the indemnitor. The City and County acknowledge and agree that if such costs, expenses, claims, actions, suits, liability, loss, judgments, attorney's fees and/or awards of damages are caused by, or result from, the concurrent negligence of the parties, this Section shall be valid and enforceable only to the extent of the negligence of each party, its agents, employees and/or officials. This indemnification shall include, by way of example, but not by way of limitation or exclusion, a party's responsibility under Section 7 to refund any fees with interest which are determined by a court of competent jurisdiction to have been improperly paid. Provided, however, the parties shall be responsible for defending any claims or challenges to their own ordinances and administrative decisions, and all costs associated with such defense.

11.2 Both parties retain the right to participate in any third party suit regarding an impact fee determination made under this Agreement and shall cooperate with each other as reasonably required.



12. No Third Party Rights.

Nothing contained herein is intended to, nor shall be construed to, create any rights in any third party, or to form the basis for any liability on the part of the City or the County, or their officials, employees, agents or representatives, to any third party.

13. Severability.

If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the parties.

14. Non-Waiver.

Waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent breach, and shall not be construed to be a modification of this Agreement.

15. Exhibits.

The following exhibits are attached hereto:

- A. Proposed City Projects List.
- B. Proposed County Projects List.

16. Survival.

The provisions of this Agreement related to expenditure or encumbrance of fees, refunds, litigation, indemnification and hold harmless shall survive the termination of this Agreement.

17. Captions.

The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.

18. Entire Agreement.

This Agreement contains the entire agreement of the parties and any representations or understandings, whether oral or written, not incorporated herein are excluded.

.IN WITNESS WHEREOF, the City and the County have executed this Agreement effective as of the date last written below.

**King County**

**City of Covington**

By: \_\_\_\_\_  
Ron Sims  
King County Executive

By: \_\_\_\_\_  
Andrew D. Dempsey  
City Manager, City of Covington

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Deputy Prosecuting Attorney

\_\_\_\_\_  
Duncan Wilson, City Attorney

Revised August 28, 2002

11515

Exhibit A

2002 Proposed Mitigation Payment System Program (MPS) Project List  
City of Covington Projects collected by King County

Jurisdiction	Project #	Project Name	From	To	MPS Cost
Covington	9001	SR-516 Stage 1B			\$1,351,670
Covington	9004	Wax Road/180th Ave. SE	SR 516	262nd Pl	\$7,380,000
Covington	9005	SE 240th St.	SE 180 St.	SE 196 St.	\$720,000
Covington	9006	180th Ave. SE.	SE Wax Rd	SE 256	\$1,110,000
Covington	9013	Covington Way	SE Wax Rd.	164th Pl. SE	\$610,000
Covington	9016	SE 256th St.@148th Ave. SE			\$850,000
Covington	9020	SE 256th St.	148th Ave.	164th Ave.	\$15,171,000
Covington	9021	SE 256th St.	164th Ave.	180th Ave.	\$7,310,000
Covington	9023	164th Ave. SE Phase I and II	SE 256 St.	SE 248th St.	\$1,128,000
Covington	9036	SR-516	Wax Rd.	Jenkins Cr.	\$2,620,000
		Total			\$38,250,670

**EXHIBIT B**

**11515**

**2002 Proposed Mitigation Payment System Program (MPS) Project List  
King County Projects collected by Covington**

Jurisdiction	TNR Project #	Project Name	From	To	1999 MPS Cost
County	G-6.10	GREEN RIVER BRIDGE PROJECTS	83 AVE S @ GREEN RIV		\$2,179,000
County	G-6.20	EAST VALLEY HIGHWAY	BRIDGE	S 277 ST	\$689,000
County	G-6.30	GREEN RIVER OVERFLOW BRIDGE	CROSSING GREEN RIV		\$259,000
County	G-8.40	S 196 ST / S 200 ST CORRIDOR	W VALLEY HWY	ORILLIA RD	\$5,771,000
County	G-85	55 AVE S @ S 277 ST			\$938,000
County	NC-5.10	ELLIOTT BRIDGE NO: 3166	ON 149 AVE SE	XING CEDAR RIVER	\$8,447,000
County	NC-5.20	149 AVE SE	SR-169	ELLIOT BRIDGE	\$5,399,000
County	SC-23	140 PL SE	SR-169	PETROVITSKY RD	\$16,706,000
County	SC-26.12	SE 240 ST	116 AVE SE	138 AVE SE	\$11,963,000
County	SC-34.12	SE 208 ST PHASE II	116 AVE SE	132 AVE SE	\$9,748,000
County	SC-55.10	140 PL SE/132 AVE SE	SE 176 ST	SE 196 ST	\$16,410,000
County	SC-55.32	140/132 AVE SE PHASE III CONSTRUCTION	SE 208 ST	SE 224 ST	\$8,815,000
County	SC-55.42	140 PL SE/132 AVE SE PHASE IV CONSTRUCT	SE 224 ST	SE 242 ST	\$7,180,000
County	SC-68.23	SE CARR RD DESIGN AND CONSTRUCTION	108 AVE SE	SR-167	\$7,560,000
County	SC-78.12	PETROVITSKY RD PHASE III	143 AVE SE	151 AVE SE	\$6,935,000
County	SC-150.12	SE 212 WY / SE 208 ST CONSTRUCTION	SR-515	SR-167	\$8,297,000
County	SC-201	140 AVE SE @ PETROVITSKY RD			\$7,074,000
County	SC-215	SR-515 (BENSON RD) @ PETROVITSKY RD			\$9,415,000
		<b>Total</b>			<b>\$133,785,000</b>