

**INTERLOCAL AGREEMENT  
CITY OF DES MOINES AND FEDERAL WAY SCHOOL DISTRICT  
REGARDING THE TRANSFER OF SCHOOL IMPACT FEES**

This Interlocal Agreement (“ILA”) is entered into this 27<sup>th</sup> day of August, 2013, by and between the City of Des Moines, a Washington municipal corporation (the “City”), and the Federal Way School District No. 210, a political subdivision of the State of Washington (the “District”) to address the transfer of school impact fees associated with the Landmark Homes, LLC Landmarque Townhouse Development (“Landmarque Development”), collected by the City on behalf of the District.

WHEREAS, Chapter 39.34 RCW authorizes two or more political subdivisions or units of local government of the State of Washington to cooperate on a basis of mutual advantage to provide for services and facilities; and

WHEREAS, the District owns and operates one school facility (Woodmont Elementary School) that is located in Des Moines; and

WHEREAS, the City reviews proposed residential development projects under Chapter 43.21 RCW, the State Environmental Policy Act (SEPA) and Title 16 of the Des Moines Municipal Code; and

WHEREAS, during the course of SEPA review, the City reviews whether a proposed residential development will impact the District and, if so, conditions the proposed residential development on the payment of school mitigation; and

WHEREAS, on March 26, 2007, the City of Des Moines executed an Environmental Mitigation Agreement with Landmark Homes, LLC (“Developer”) pursuant to Chapter 43.21 RCW, the State Environmental Policy Act (SEPA), and Title 16 Des Moines Municipal Code, to provide for mitigation of existing and known environmental impacts associated with the Development as described in Exhibit A; and

WHEREAS, the Environmental Mitigation Agreement identifies appropriate school mitigation by reference to the District’s adopted Capital Facilities Plan and school impact fees; and

WHEREAS, the Mitigation Agreement describes the procedures and criteria by which school impact fees will be calculated for the Landmarque Development; and

WHEREAS, the City collects the school impact fees from the Developer; and

WHEREAS, the Parties mutually desire to establish a process to transfer the school impact fee payments from the City to the District for the Landmarque Development; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of defining their respective rights, obligations, costs and liabilities regarding this undertaking.

NOW THEREFORE, in consideration of the terms, conditions and covenants contained herein, the Parties agree as follows:

## **TERMS**

Section 1. Purpose. The purpose of this Agreement is to establish a formal agreement under which the City will collect school impact fees in accordance with the March 26, 2007 Environmental Mitigation Agreement between the City of Des Moines and Landmark Homes, LLC and distribute said fees to the District. The terms, conditions and covenants of this Agreement shall accordingly be interpreted to advance this purpose. This Agreement further seeks to allocate and define the Parties' respective rights, obligations, costs and liabilities concerning the establishment, operation and maintenance of this undertaking.

Section 2. Term. This Agreement shall be effective upon execution by the Parties hereto. Unless terminated in accordance with Section 3 of this Agreement shall remain in effect until one of the following events, whichever is later: (a) the District's written acceptance of and payment for all school impact fees collected pursuant hereto, or (b) the complete buildout of the Landmarque Development for which the school impact fees are being collected. Thereafter, the Agreement shall expire automatically. The Parties may at their option renew this Agreement for a mutually agreed upon term in writing by both Parties.

Section 3. Termination. Either Party may terminate this Agreement with or without cause by providing the other Party with 30 days written notice of its intent to terminate. Termination or expiration shall not alter the City's payment obligations under Section 4 and shall not alter the District's respective obligations under Section 5 of this Agreement.

Section 4. Obligations of the City. The City shall collect school impact fee payments from the Landmark Homes LLC as conditioned under SEPA, and described in the Environmental Mitigation Agreement provided as Exhibit A.

Section 5. Obligations of the District. The District agrees to use the school mitigation payment consistent with the terms of the City's original environmental mitigation payment and SEPA review of the project as described in Exhibit A.

Section 6. Payment schedule. The Parties agree to the following receipt and payment schedule:

- A. When the City receives school impact fee payments from a developer, the City shall transfer such payments to the District within thirty (30) days of receipt. The transfer of payment shall include the name of the project, the tax parcel identification number(s) for the project, the number of units for which the fees were paid, and the date of payment.

- B. The City shall retain a \$2,000 administrative fee for the intake of the school impact fees and processing payment to the District.
- C. The City shall transfer payments to the District and notify the District of matters pertaining to SEPA and school mitigation using the following contact information:

Federal Way School District No. 210  
Attn: Assistant Superintendent, Business Services  
33330 8<sup>th</sup> Avenue S.  
Federal Way, WA 98003  
Telephone: (253) 945-2000

Section 7. The City of Des Moines Planning, Building and Public Works Director, or his/her designee, shall serve as the City's administrator of this Agreement. The District's Superintendent, his/her designee, shall serve as the District's administrator of this agreement. No separate legal entity is formed by this Agreement.

Section 8. Release, Indemnification and Hold Harmless Agreement. Each Party to this Agreement shall be responsible for its own negligent and/or wrongful acts or omissions, and those of its own agents, employees, representatives, contractors or subcontractors, to the fullest extent required by laws of the State of Washington. Each Party agrees to protect, indemnify and save the other Party harmless from and against all claims, demands and causes of action of every kind and character arising directly or indirectly, or in any way incident to, in connection with, or arising out of work performed under the terms hereof, caused by its own fault or that of its agents, employees, representatives, contractors or subcontractors. The City further agrees to fully indemnify the District from and against any and all costs of defending any such claim or demand to the end that the District is held harmless therefrom. The District shall also indemnify and hold the City harmless against any and all costs of defending any such claim or demand to the end that the City is held harmless therefrom.

Section 9. Mediation/Arbitration Clause: If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation before a mutually agreed alternative dispute resolution entity or by mediation administered under the American Arbitration Association's Commercial or Construction Rules before resorting to arbitration. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

Section 10. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington. Any action arising out of this Agreement shall be brought in King County Superior Court.

Section 11. No Employment Relationship Created. The Parties agree that nothing in this Agreement shall be construed to create an employment relationship between the district and any

employee, agent, representative or contractor of the City, or between the City and any employee, agent, representative or contractor of the District.

Section 12. No Third Party Rights. This Agreement is intended for the sole and exclusive benefit of the parties hereto and no third party rights are created by this Agreement.

Section 13. Notices. Notices to the City shall be sent to the following address:

City of Des Moines  
Planning, Building and Public Works Department  
Attn: Dan Brewer, P.E., Director  
21630 11<sup>th</sup> Avenue S, Suite D  
Des Moines, WA 98198-6398

Notices to the District shall be sent to the following address:

Federal Way School District No. 210  
Attn: Assistant Superintendent, Business Services  
33330 8<sup>th</sup> Avenue S.  
Federal Way, WA 98003

Section 13. Duty to File Agreement with County Auditor. The City shall, after this Agreement is executed by both Parties, file this Agreement with the King County Auditor.

Section 14. Integration/Entire Agreement. This document constitutes the entire embodiment of the Agreement between the Parties, and, unless modified in writing by an amendment to the Interlocal Agreement signed by the Parties hereto, shall be implemented as described above. This Agreement supersedes any oral representations that are inconsistent with or modify its terms and conditions.

Section 15. Non-Waiver. Waiver by any Party of any of the provisions contained within this Agreement, including but not limited to any performance deadline, shall not be construed as a waiver of any other provisions.

Section 16. Amendment. This Agreement may be amended only upon consent of all Parties hereto. Any amendment hereto shall be in writing and shall be ratified and executed by the Parties in the same manner in which it was originally adopted.

Section 17. Severability. If any provision of this Agreement shall be held invalid, the remainder of this agreement shall not be affected thereby.

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Section 18. Counterparts. This Agreement shall be effective whether signed by all Parties on the same document or whether signed in counterparts.

THE CITY OF DES MOINES

FEDERAL WAY SCHOOL  
DISTRICT NO. 210

  
\_\_\_\_\_  
By: Anthony A. Piasecki  
City Manager  
By Direction of the Des Moines City Council  
In Open Public Meeting on August 8, 2013

  
\_\_\_\_\_  
By: Superintendent

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

ATTEST:

  
\_\_\_\_\_  
City Clerk



# EXHIBIT "A"

**CITY OF DES MOINES, WASHINGTON**  
Planning, Building, and Public Works Department  
21650 11th Avenue South, Suite D  
Des Moines, WA 98198  
Phone: (206) 870-7576 Fax: (206) 870-6544



## ENVIRONMENTAL MITIGATION AGREEMENT

**Project File No:** LUA06-014

**Project Name:** Landmarque Townhouse Development

**Project Address:** Pacific Highway and South 263<sup>rd</sup> Street

**Owners:** Mitchell Family LLC.  
Attn: Larry King  
PO Box 26116  
Federal Way, WA 98093  
(253) 927-6116

Vahan & Anoush Chamlian  
Attn: Larry King  
PO Box 26116  
Federal Way, WA 98093  
(253) 927-6116

**Contact/Applicant:** Landmark Homes  
Attn: David Litowitz  
PO Box 26116  
Federal Way, WA 98093  
(253) 927-6116

**Staff Contact:** Jason Sullivan; Land Use Planner II

**Date of Decision:** March 26, 2007

**THIS AGREEMENT** is entered into by and between the City of Des Moines, a municipal corporation hereinafter referred to as the "City" and Landmark Homes LLC hereinafter referred to as the "Developer".

**WHEREAS**, this agreement is executed pursuant to Chapter 43.21 RCW, the State Environmental Policy Act (SEPA), and Title 16 Des Moines Municipal Code, to provide for mitigation of existing and known environmental impacts associated with the development hereinafter described. This agreement is not, and shall not be construed as a voluntary agreement pursuant to RCW 82.02.020, and the provisions of RCW 82.02.020 shall not be applied hereto. This agreement does not preclude any evaluation and determination by the City of Des Moines upon later actions or proposals undertaken by the Developer that may require a determination of significance and environmental review under SEPA;

**WHEREAS**, the property located in the City is further legally described as:

**TAX PARCEL # 2822049067**

THAT PORTION OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., LYING WESTERLY OF STATE ROAD NO. 1, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER;

THENCE SOUTH 88°03'31" EAST ALONG THE NORTH UNE OF SAID SOUTH HALF A DISTANCE OF 490.0 FEET;

THENCE SOUTH 03°05'51" WEST A DISTANCE OF 160.03 FEET;

THENCE SOUTH 88°10'16" EAST A DISTANCE OF 196.56 FEET TO A POINT ON THE WESTERLY MARGIN OF PACIFIC HIGHWAY SOUTH (STATE ROAD NO. 1);

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THENCE ALONG SAID WESTERLY MARGIN SOUTH 20'43'16" WEST A DISTANCE OF 134.70 FEET TO THE NORTH LINE OF THE SOUTH 375.00 FEET, AS MEASURED ALONG THE WEST UNE OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 28;

THENCE NORTH 8810'16" WEST ALONG THE NORTH LINE OF SAID SOUTH 375.00 FEET A DISTANCE OF 636.78 FEET TO THE WEST UNE OF SAID SOUTH HALF;

THENCE NORTH ALONG SAID WEST UNE 288.42 FEET, MORE OR LESS, TO THE POINT OF BEGINNING. AU\_ SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

**TAX PARCEL # 2822049209**

THE SOUTH 375 FEET; AS MEASURED ALONG THE WEST LINE OF THAT PORTION OF THAT PORTION OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON; LYING WESTERLY OF PACIFIC HIGHWAY SOUTH (SR-99), AND TRACT 8, SECOMA HI-WAY TRACTS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 37 OF PLATS, PAGE 42, IN KING COUNTY,

WASHINGTON;

EXCEPT THE FOLLOWING DESCRIBED PARCEL OF LAND:

BEGINNING AT THE SOUTHEAST CORNER OF SAID TRACT 8;

THENCE NORTH 8810'17" WEST ALONG THE SOUTH LINE THEREOF A DISTANCE OF 331.14 FEET; THENCE NORTH 01'08'58" EAST PARALLEL WITH THE WEST UNE OF SAID TRACT 8 A DISTANCE OF 200.01 FEET;

THENCE SOUTH 8810'17" EAST PARALLEL WITH THE SOUTH UNE OF SAID TRACT 8 A DISTANCE OF 401.96 FEET TO THE WESTERLY MARGIN OF SAID PACIFIC HIGHWAY SOUTH;

THENCE SOUTH 20'43'24" WEST ALONG SAID MARGIN A DISTANCE OF 211.39 FEET TO THE POINT OF BEGINNING.

(ALSO KNOWN AS LOT B OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER RECORDING NUMBER 9711249013.)

**TAX PARCEL # 2822049233**

THE WEST HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON; EXCEPT THE NORTH 390 FEET THEREOF;

AND EXCEPT THE WEST 115 FEET OF THE SOUTH 100 FEET OF THE NORTH 490 FEET OF SAID WEST HALF.

WHEREAS, the Developer has submitted a Modified Subdivision application in order to subdivide 10.06 acres into 66 attached single family lots (townhouses), 2 detached single family lots, and 1 commercial lot;

WHEREAS, the residential lots created by the subdivision will have an average size of approximately 2982 square feet;

WHEREAS, the overall lot area as calculated per DMMC 18.10.040 is 3,600 square feet;

WHEREAS, based upon the Population Local Review Worksheet for the City of Des Moines provided by the Office of Financial Management approximately 183 people (68 lots \* 2.7 individuals) will reside within the project site;

WHEREAS, the proposed townhouse subdivision is served by the Federal Way School District;

WHEREAS, based upon the "Housing Generation Factor" established by the Federal Way School District approximately 50 elementary students, 20 junior high students, and 18 high school students will reside within the project site;

WHEREAS, the Federal Way School district has adopted an impact fee program to ensure that adequate public school facilities and improvements are available to serve the new development;

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**WHEREAS**, the Federal Way School district has adopted an impact fee program to establish standards whereby new development pays a proportionate share of the cost for public facilities needed to serve the new development;

**WHEREAS**, the Federal Way School district has adopted an impact fee program to ensure that the school impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicative fees for the same impact;

**WHEREAS**, the Federal Way School district has adopted an impact fee program to provide needed funding for growth-related school improvements;

**WHEREAS**, the Federal Way School district has adopted an impact fee program which established a multifamily unit impact fee of \$856.00 per unit;

**WHEREAS**, the Federal Way School district has adopted an impact fee program which established a single family unit impact fee of \$3018.00 per unit;

**WHEREAS**, the Federal Way School district has adopted an impact fee program which defines multifamily as all townhouses and apartments;

**WHEREAS**, the Federal Way School district has adopted an impact fee program which defines single family as all detached dwelling units;

**WHEREAS**, the Federal Way School district has adopted an impact fee program which requires that separate fees will be calculated for single family and multifamily units;

**WHEREAS**, the City has reviewed a study entitled, "Landmarque Wetland Analysis Report and Concept Mitigation" (dated December 9, 2005) and a revised study entitled "Landmarque Wetland Analysis Report and Concept Mitigation" (dated November 7, 2006) prepared by Sewell Wetland Consulting (formally B-12 Wetland Consulting Inc.) which delineated and established mitigation measures for the wetlands located on the project site;

**WHEREAS**, the applicant has proposed to fill a 9,113 square foot wetland labeled as Wetland "B" on the proposed development plans;

**WHEREAS**, wetland fills under the jurisdiction of the Army Corps of Engineers require compliance with section 404 of the Clean Water Act;

**WHEREAS**, wetland fills under the jurisdiction of the Army Corps of Engineers larger than 4,356 square feet are not covered by the Army Corps of Engineers Nationwide Permit 18;

**WHEREAS**, the Department of Ecology has placed Regional Conditions on Nationwide Permits;

**WHEREAS**, the City has reviewed a study entitled, "Landmarque Traffic Impact Analysis" (dated June 30, 2006) and a mitigation confirmation letter (dated June 23, 2006) prepared by Traffic Engineers and Transportation Planners which evaluated the traffic impacts associated with the project;

**WHEREAS**, the City has reviewed a memo entitled "Storm Vault Lateral Pressure and Foundation Design Criteria, Landmarque Plat, Pacific Highway South, Des Moines, WA " (dated March 30, 2006) prepared by GeoResources, LLC., which evaluated surface and subsurface conditions at the project site in order to develop geotechnical recommendations and design criteria;

**WHEREAS**, the Developer is required to obtain a Clearing, Grading and Filling Permit from the City Planning, Building and Public Works Department for construction of the required infrastructure and the residential structures which emphasizes land development practices that result in a minimal disturbance to the City's vegetation and soils by providing protection to reduce degradation of streams or other water bodies located in and adjacent to the project site via scouring, siltation, and water pollution;

**WHEREAS**, Native American and other historically and culturally significant artifacts have been uncovered within the City of Des Moines;

**WHEREAS**, the City of Des Moines Planning, Building, and Public Works Department has determined that the proposed development on the subject property will not result in probable significant adverse environmental impacts and that those environmental impacts identified in the SEPA application will be addressed by entering into an agreement to mitigate such impacts;

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NOW, THEREFORE, the City and Developer agree that the following mitigation measures shall be employed by the Developer to ensure that probable adverse environmental impacts created by the proposed project are minimized or eliminated.

1. The Developer is required to comply with all Federal and State regulations regarding the fill of the wetland labeled "Wetland B" on the development plans. If there are Federal or State permits required to fill the wetland, the applicant must obtain those permits prior to the City's approval of the civil engineering plans
2. The Developer shall send a "Notice of Intent to Commence Work" a minimum of 30 days prior to commencing the grading operations needed to install the required infrastructure improvements together with a project work schedule including the phasing of the construction activity, and a reduced scale map identifying the project to all property owners within 300 feet of the project site and the City.
3. The Developer shall properly dispose of the anticipated unusable excavated soils to the satisfaction of the City of Des Moines. The developer shall submit a grading plan that accurately reflects the amounts and locations of cuts and fills. The plan will also identify the amount of any export soils and a proper disposal method and/or disposal site prior to issuance of the City Grading Permit.
4. The Developer will pay \$62,532.00 in school impact fees calculated in the following manner:
  - a) \$56,496.00 for the townhouses (66 \* \$856.00)
  - b) \$6036.00 for the detached dwelling units (2 \* \$3018.00)
5. Should the Developer or its contractor uncover any landmarks or evidence of archeological, scientific or cultural importance, the Developer shall cease all work and contact the City of Des Moines and the Washington State Department of Historic Preservation.
6. Should a term, provision, condition or other portion of the Agreement be held to be inoperative, invalid, or void, the same shall not affect any other term, provision, condition or other portion of this Agreement; and the remainder of this Agreement shall be effective as if such term, provision, condition or portion had not been contained herein.

CITY:

Grant Fredricks  
Grant Fredricks, P.E.  
Planning, Building, and Public Works Director  
City of Des Moines

DEVELOPER:

David Litowitz  
David Litowitz  
Landmark Homes, Inc.

STATE OF WASHINGTON)

) ss.

COUNTY OF King)

I, the undersigned, a notary public in and for the State of Washington, hereby certify that on this 21st day of March, 2008, David Litowitz personally appeared before me, to me known as the individual(s) empowered to execute the foregoing instrument, and acknowledged that they signed and posted the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

Notary Public and for the State of Washington,

Residing at King County

My commission expires 4/29/2008

GF [Signature]

DL [Signature]