

McCORMICK URBAN VILLAGE

DEVELOPMENT AGREEMENT FOR TRANSPORTATION

THIS AGREEMENT is entered into between Kitsap County, a Washington municipal corporation (“the County”), and GEM I LLC, a Washington corporation (“GEM”).

RECITALS

A. WHEREAS, GEM is the owner of the undeveloped lands included in the South Kitsap UGA/ULID #6 Sub-Area Plan ("Plan"), known as "McCormick Urban Village"; and

B. WHEREAS, Kitsap County has adopted Kitsap County Code (“KCC”) Chapter 17.428, “Master Planning Requirements for the South Kitsap UGA/ULID #6 Sub-Area” to implement the Sub-Area Plan; and

C. WHEREAS, GEM has applied for a Master Plan Approval under Application No 0418788 pursuant to the requirements of KCC Chapter 17.428 for portions of the McCormick Urban Village north of Old Clifton Road designated Urban Cluster Residential, and known as McCormick North Phases I and II; and

D. WHEREAS, Kitsap County Code Section 17.428.060(B)(6) requires that the Master Plan Application include a plan for “the phasing of on and off-site public-street and transportation facilities (e.g., sidewalks, bike and pedestrian trails and paths, bus stops, street lights, traffic signals, utilities or improvements of adjacent streets) consistent with Titles 18 and 19. . . .”; and

E. WHEREAS, Kitsap County Code 17.428.060(B)(6)(c)(ii) requires that the Master Plan Application’s transportation analysis “identify potential methods for funding the design and construction of the system improvements needed to serve the affected areas at full build-out”; and

F. WHEREAS, in the Master Plan Scoping Summary Report for McCormick North – Phase I, dated April 21, 2004, the Department of Community Development ("DCD") required that the master plan include a full transportation phasing plan including funding sources for McCormick Urban Village (i.e., the entire area that is subject to the ULID #6 Sub-Area Plan); and

G. WHEREAS, Kitsap County Code Section 4.110.230(C), Independent Fee Calculations, allow developers to submit and the County to approve an independent fee calculation for a particular development that replaces the fees in KCC 4.110.200 or 4.11.210; and

H. WHEREAS, GEM has submitted, as part of the Master Plan Application, the McCormick Urban Village Transportation Plan, which assesses the traffic impacts of and identifies the Kitsap County transportation system improvements needed to support the full build

out of McCormick Urban Village, estimates the costs of constructing the identified system improvements, and calculates the traffic impact fees that represent the development's proportionate share of these system improvements; and

I. WHEREAS Kitsap County has reviewed the McCormick Urban Village Transportation Plan for compliance with all adopted standards and requirements; and

J. WHEREAS, the Kitsap County Departments of Community Development ("DCD") and Public Works have reviewed the fee calculations submitted by GEM as part of the Transportation Plan and determined 1) that the traffic improvements identified in the Transportation Plan and listed here in Exhibit A mitigate the traffic impacts of the full build-out of the McCormick Urban Village; and 2) that the traffic impacts fees set forth in this Agreement fund 100% of the McCormick Urban Village's proportionate share of the estimated costs of the necessary transportation system improvements within the jurisdiction of Kitsap County, as well as contribute to the funding of the regional improvements which are the subject of the regional traffic impact fees already imposed pursuant to KCC Chapter 4.110; and

K. WHEREAS, the parties wish to assure that the traffic impact fees collected within the area of the McCormick Urban Village are expended to fund the required system improvements; and

L. WHEREAS, the parties anticipate that development of McCormick Urban Village will occur over a period of years and that they wish to implement a plan for funding and constructing the required Kitsap County transportation system improvements at such time as impacts occur and improvements are warranted; and

M. WHEREAS, the parties wish to have an assurance that the increase in impact fees provided by this Agreement satisfies Kitsap County's requirements to mitigate traffic impacts projected to occur to the County's transportation system as the result of the build-out of McCormick Urban Village, and

N. WHEREAS, GEM wishes assurance that it will receive impact fee reimbursements, as appropriate, from Kitsap County if and when GEM constructs certain transportation system improvements, which are listed in the Transportation Plan and would otherwise be constructed by Kitsap County; and

O. WHEREAS Kitsap County has jurisdiction over land within unincorporated Kitsap County and is authorized under RCW 82.02.050-.090 and KCC Chapter 4.110 to impose impact fees to pay for system improvements that are reasonably related to the new development; and

P. WHEREAS, RCW 36.70B.170, *et. seq.*, authorizes counties to enter into development agreements providing for, among other things, "development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development."

AGREEMENT

NOW, THEREFORE, the County and GEM agree as follows:

1. **Applicability.** This Agreement applies only to those parcels within the McCormick Urban Village, shown on the map attached as Exhibit C, that are owned by GEM as of the execution date of this Agreement and listed in Exhibit D, and to parcels within the McCormick Urban Village which are acquired by GEM after the date of this Agreement. GEM will notify the County of any such purchase so that the later-purchased parcels can be incorporated into the County's tracking system designed to carry out this Agreement. In accordance with section 19 below, subsequent sales of these parcels will not affect this Agreement's applicability. Any reference to ULID #6 or McCormick Urban Village for purposes of collecting or reimbursement of impact fees shall be limited to the applicable parcels.
2. **County Adoption of Alternative Fees.** Kitsap County hereby adopts, pursuant to KCC 4.110.230(C), the McCormick Urban Village Traffic Impact Fees attached hereto as Exhibit A. Funds generated by fees paid pursuant to Exhibit A shall be expended on transportation system improvement projects listed in Exhibit A, so long as the improvement has been listed on the County's Transportation Improvement Program (TIP) pursuant to Section 3 of this Agreement, provided the portion of the fee designated as the "regional per trip fee" is still to be expended on regional improvements within the applicable service area to the extent that those regional improvements are located outside the McCormick Urban Village, and provided the administrative fee specified in Exhibit A shall be retained by Kitsap County and placed in the general fund. In the event that the fee schedule in KCC 4.110.200 for regional improvements outside the McCormick Urban Village is adjusted in the future, the "regional per trip fee" set forth in Exhibit A shall be adjusted accordingly.
3. **County Inclusion of Projects in Six-Year TIP.** When appropriate, in its annual update of its Six-Year Transportation Improvement Program (TIP), Kitsap County shall include, as warranted, the appropriate transportation system projects from the McCormick Urban Village Transportation Plan. The Conceptual Improvement Phasing Plan in the McCormick Urban Village Transportation Plan shall be reviewed and modified as appropriate at the time of the TIP update, taking into consideration county resources and competing priorities, in order to assure that Kitsap County transportation system improvements anticipated for various portions of the McCormick Urban Village are developed reasonably concurrent with the residential and other uses of McCormick Urban Village and other developments which generate the need for such improvements.
4. **County Construction of Improvements.** As funding allows, Kitsap County (or GEM, pursuant to Section 5 of this Agreement) shall construct the transportation system improvements identified in Exhibit A, according to the McCormick Urban Village Transportation Plan. The County anticipates that GEM will construct the Glenwood Connector Roadway improvement as well as the Clifton Road \ Feigley Road intersection

improvement except for the traffic signal. The timing of construction of such improvements shall be reviewed and modified as appropriate at the time of specific land use approvals for development within McCormick Urban Village in order to assure that Kitsap County transportation system improvements anticipated for various portions of the McCormick Urban Village are developed reasonably concurrent with the residential and other uses of McCormick Urban Village and other developments which generate the need for such improvements.

5. **GEM Construction of Improvements.** With the County's prior approval, GEM may construct improvements that this Agreement anticipates will be constructed by Kitsap County under Section 4 above. In the event that GEM constructs projects pursuant to this Section, the design and construction thereof shall be coordinated with and approved by the Kitsap County Departments of Community Development and Public Works, shall be subject to Kitsap County permit requirements in effect at the date of application for construction permits, and shall be subject to the requirements of RCW Chapter 39.04 to the extent the improvement can be classified as a public work. As described below, for each such improvement so constructed, GEM may apply for an impact fee reimbursement.
6. **Reimbursement for Construction by GEM.** As allowed by KCC Chapter 4.110 and to the extent funds are available, the County shall reimburse GEM for the cost of construction. Such reimbursement shall be paid from non-regional impact fees actually collected by Kitsap County from development within the McCormick Urban Village pursuant to this Agreement, and other approved sources of funds for construction of County road improvements. The reimbursement from impact fees shall be equal to thirty-five percent (35%) of the sub-area impact fees collected pursuant to this Agreement. These funds shall be paid to GEM after GEM applies for reimbursement for the improvement GEM constructed and the reimbursement amount has been calculated and approved by Kitsap County, and then annually thereafter until the approved reimbursement amount for that project has been fully repaid. If GEM constructs multiple improvements, each reimbursement request will be evaluated separately, and will not increase the percentage reimbursed, but will be added to the total amount to be reimbursed. In the event that GEM constructs more than thirty-five percent of the improvements listed in Exhibit A, the parties will meet and modify, if necessary and as appropriate, the percentage of the sub-area impact fees to be paid to GEM as reimbursement.

In no event shall GEM be entitled to reimbursements pursuant to this Agreement which are in excess of amounts actually spent constructing improvements listed on Exhibit A and in no case shall GEM be reimbursed for improvements not listed on Exhibit A.

These provisions are intended to assure that GEM pays its proportionate share of the cost of the improvements subject to this Agreement through the payment of impact fees and that Kitsap County pays for the share of the cost of the improvements which are attributable to existing traffic and/or traffic generated by other development, consistent with KCC Chapter 4.110 relating to Roads Impact Fees.

7. **Limits on County Authority.** Nothing in this Agreement shall be construed as limiting Kitsap County's authority to assess fees or impose conditions requiring construction of traffic improvements on projects outside the area which is the subject of the McCormick Urban Village.
8. **Projects Outside Kitsap County Jurisdiction.** At such time as Kitsap County enters into a formal agreement regarding funding of transportation improvements with any other jurisdiction, such as WSDOT or the City of Port Orchard, and such agreement provides for the imposition of additional traffic impact fees for specific projects administered by such other jurisdictions, GEM and Kitsap County agree to amend this Agreement so that future development within McCormick Urban Village shall be subject to such additional fees.
9. **Dedication of Right-of-Way.** To the extent that road improvements which occur pursuant to this Agreement require additional right-of-way, GEM will dedicate that portion of the additional right-of-way which is to be located on property owned by GEM or its affiliates. Such dedications shall occur within a mutually agreeable timeframe prior to the bid solicitation for the project requiring the additional right-of-way.
10. **County Adoption of Special Non- Motorized Mitigation Payment.** Kitsap County shall adopt, as a SEPA mitigation measure, the McCormick Urban Village Non-Motorized Mitigation Fee in the amount of \$8.69 per trip as more specifically set forth in the McCormick Urban Village Transportation Plan. This fee is intended to represent a proportionate share payment to address the impacts of the McCormick Urban Village. The revenue from this fee shall be used in part for the design and construction of a regional bike lane along Old Clifton Road between Sunnyslope Drive and the Port Orchard City limits at SR-16, as identified in the Kitsap County Bicycle Facilities Plan (May 2001). The Non-Motorized Mitigation Fee shall be collected in accordance with KCC Chapter 4.110 and in addition to the Traffic Impact Fees described in Section 2 of this Agreement. The timing of the construction of the regional bike lane will be coordinated with other improvements to Old Clifton Road, the schedule for which shall be determined by Kitsap County as set forth in Sections 3 and 4, above.
11. **Concurrency.** Kitsap County agrees that adoption and implementation of this Development Agreement will provide adequate road system capacity for the full build-out of the McCormick Urban Village in accordance with the adopted ULID #6 Sub-Area Plan. A concurrency approval for full build-out of the McCormick Urban Village in accordance with the adopted ULID #6 Sub-Area Plan shall be issued by Kitsap County. No further concurrency applications will be required for future development applications which are consistent with the adopted ULID #6 Sub-Area Plan. Kitsap County reserves the right to require concurrency review and approval for future development within the McCormick Urban Village to the extent that such development exceeds the levels approved by that Sub-Area Plan.
12. **Annexation.** As provided by RCW 36.70B.190, while this Agreement is in effect, "the agreement is binding on . . . a city that assumes jurisdiction through incorporation or

annexation of the area covering the property covered by the development agreement.” In the event McCormick Urban Village is annexed or incorporated into a municipality, and the municipality agrees that it is bound by this agreement, all impact fees collected by Kitsap County pursuant to this Agreement that represent the proportional share of the costs for system improvements reasonably related to the McCormick Urban Village regional system improvements that are listed in the Capital Facilities Plan and that are available at the time of annexation shall be conveyed to the municipality for use in funding construction of the necessary transportation system improvements which are the subject of this Agreement.

13. **Vesting Rules.** This Agreement shall remain in effect for all development within the McCormick Urban Village that is listed in the ULID #6 Sub-Area Plan for a period ending 15 years after the completion of construction of all of the improvements listed in Exhibit A. Kitsap County will not impose additional transportation impact fees against development that pays impact fees pursuant to this Agreement except to the extent that the fee for regional improvements outside the McCormick Urban Village is modified as set forth in Section 2. With respect to McCormick North Phase II, South Kitsap School District shall not be required to pay any impact fees now or later established under the provisions of this Agreement so long as the school site is used for school purposes.
14. **Application of KCC Chapter 4.110.** Except as provided under Paragraph 13, the provisions of KCC 4.110, as now or hereafter amended, shall apply to the fees collected pursuant to this Agreement, including but not limited to establishing procedures for collection of impact fees, requirements regarding the point in time when fees must be paid, adjustments based on the Consumer Price Index, and exemptions from impact fee requirements for certain uses.
15. **Indemnification.** To the fullest extent permitted by law, GEM shall indemnify, defend, and hold harmless the County, its elected and appointed officials, officers, employees and agents from and against all claims, actions, suits, liability, loss, expenses, damages and judgments, including attorneys fees and costs, regarding the collection and/or reimbursement of impact fees pursuant to this Agreement. In the event that a court of competent jurisdiction determines that fees collected pursuant to this Agreement have been improperly collected, the party holding such fees (including any fees that have been paid to GEM as a reimbursement pursuant to this Agreement) shall be refunded to the original payor(s) of the impact fees. In the event that a court of competent jurisdiction determines that the collection of impact fees to pay for any of the road projects listed in Exhibit A is improper, the fee established by this Agreement shall be adjusted accordingly, and the SEPA review process for all subsequent land use approvals for development within McCormick Urban Village shall include an evaluation of the need for and allocation of responsibility for design and construction of the improvements that were originally intended to be constructed using the impact fees established by this Agreement.

16. **Severability.** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable, in whole or in part, the validity of the remaining provisions will not be affected, and the parties' rights and obligations will be construed and enforced as if the Agreement did not contain the particular provision held to be invalid. If any provision of the Agreement conflicts with any statutory provision of the State of Washington, the provision will be deemed inoperative to the extent of the conflict or modified to conform to statutory requirements.
17. **Amendments.** Except as otherwise provided in this Section, no change or modification of this Agreement shall be valid unless the same is in writing and is signed by the authorized representatives of Kitsap County and GEM. No purported or alleged waiver of any of the provisions of this Agreement shall be binding or effective unless in writing and signed by the party against whom it is sought to be enforced.
18. **Serious Threat to Public Health and Safety.** Pursuant to RCW 36.70B.170(4), the County reserves the authority to impose new or different regulations to the extent required by a serious threat to public health and safety.
19. **Binding Effect.** This Agreement shall be recorded with the Kitsap County Auditor and shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto. Any city that assumes jurisdiction through incorporation or annexation of the area subject to this Agreement shall also be bound to this Agreement, pursuant to RCW 36.70B.190. A list of parcels subject to this Agreement as of the date of execution of this Agreement is attached hereto as Exhibit D.
20. **Relationship of the Parties.** Notwithstanding any other provision of this Agreement, or any other agreements, contracts, or obligations which may derive herefrom, nothing herein shall be construed to make the County or GEM partners or joint venturers, or to render any other parties liable for any of the debts or obligations of the other parties, it being the intention of this Agreement merely to create the agreements set forth herein with regard to transportation improvements to mitigate the traffic impacts of the McCormick Urban Village.
21. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Any action with respect to this Agreement shall be brought in Kitsap County Superior Court, Port Orchard, Washington.
22. **Multiple Originals.** This Agreement may be executed in multiple copies, each of which shall be deemed an original.
23. **Construction.** The captions throughout this Agreement are for convenience and reference only and the words contained in them shall not be held to expand, modify, amplify or aid in the interpretation, construction or meaning of this Agreement. All parties hereto have been represented by legal counsel and accordingly hereby waive the general rule of construction that an agreement shall be construed against its drafter.

EXECUTED by the parties on the dates hereinafter indicated.

DATED: _____ KITSAP COUNTY BOARD OF COMMISSIONERS

CHRIS ENDRESEN, Chair

ATTEST: _____
JAN ANGEL, Commissioner

Opal Robertson
Clerk of the Board

PATTY LENT, Commissioner

APPROVED AS TO FORM:

By: _____
Deputy Prosecuting Attorney

Date: _____

GEM 1, LLC

By: _____

Its: _____

Date: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

I certify that I know of have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledge it as the

_____ of GEM 1, LLC to be the fee and voluntary act of such party for the purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this _____ day of _____ 2005.

NOTARY PUBLIC in and for the State of
Washington, residing at _____.
My appointment expires: _____.

APPROVED AS TO FORM:

By: _____
Attorney for GEM 1, LLC

Date: _____

EXHIBIT A

	GEM's Proportionate Share ¹
Clifton \ Sunnyslope intersection	126,000
Clifton \ Feigley intersection	235,000
Clifton \ Campus Parkway intersection	371,000
Clifton \ McCormick Woods Drive intersection	110,000
Clifton \ Anderson Hill Road intersection	173,000
Clifton \ Berry Lake Road intersection	165,000
Glenwood Connector Roadway ²	2,000,000
Sunnyslope Road Widening	384,000
Clifton Road Widening	<u>2,000,000</u>
sub-total	5,564,000
Contingency @ 30%	<u>1, 669,200</u>
Total	7,233,200
# of Trips	50,380
Sub-area Per Trip Fee	\$143.57
County administrative fee (1% of sub-area per trip fee)	<u>\$1.44</u>
Regional Per Trip Fee	<u>\$4.56</u>
Total Per Trip Fee	\$149.57

* Does not include the Non-Motorized Fee established pursuant to Section 10.

¹ GEM's Proportionate Share has been calculated using the percent of the impacts on transportation created by the McCormick Village as set forth in the ULID #6 Environmental Impact Statement.

² The Glenwood Connector Roadway will be designated as a system improvement to support the full build-out of McCormick Village. The McCormick Village's fair share of the improvement is 100%. The Glenwood Connector Roadway is not a public work for purposes of RCW chapter 39.04.

EXHIBIT B

MCCORMICK URBAN VILLAGE TRANSPORTATION PLAN

EXHIBIT C

MAP OF McCORMICK URBAN VILLAGE

EXHIBIT D

LIST OF SUBJECT PARCELS

Note: This list of tax parcel numbers is the list of properties which are subject to the terms and conditions of this Agreement and this list is accurate as of the date this Agreement was executed. The properties listed below shall be subject to the terms of this Agreement regardless of any future change in tax parcel number.

McCormick North	McCormick West	McCormick Woods
042301-4-025-2007	082301-2-003-2003	6031-000-146-0005
042301-3-003-2005	082301-1-013-2003	6031-000-131-0002
052301-4-013-2000	082301-1-010-2006	5190-000-052-0006
052301-4-014-2009	082301-1-014-2002	092301-1-003-2004
052301-4-015-2008	172301-2-002-2003	092301-1-002-2005
052301-4-016-2007	172301-2-003-2002	5356-000-076-0008
052301-4-017-2006	172301-2-006-2009	
052301-4-018-2005	172301-2-007-2008	
052301-2-021-2004	172301-2-004-2001	
052301-2-022-2003	172301-2-005-2000	
052301-2-023-2002	172301-3-004-2009	
052301-2-024-2001		
052301-3-023-2000		
052301-3-024-2009		
052301-3-021-2002		
052301-3-022-2001		