

**INTERLOCAL AGREEMENT BY AND BETWEEN
THE CITY OF VANCOUVER AND
EVERGREEN SCHOOL DISTRICT, NO. 114**

This Interlocal Agreement (the "Interlocal Agreement") is made and entered into effective on the date that it is fully executed by and between the City the Vancouver (City) and Evergreen School District, No. 114 (District).

RECITALS

WHEREAS, the City and District have had a long-standing partnership that benefits the community they both serve; and

WHEREAS, the partnership between the City and District enables a multitude of mutually beneficial investments and services to occur; and

WHEREAS, the City and District wish to continue that partnership; and

WHEREAS, pursuant to the terms of an Interlocal agreement between the City and District, the City has collected school impact fees (SIF's) on behalf of the District;

WHEREAS, under the terms of that agreement, the City's position is it's liability to the District is limited to the fees the City collects; and

WHEREAS, on December 7, 2015, the Vancouver City Council, pursuant to the District's request, adopted Ordinance M-4147 that established new school impact fees (SIF's) for residential development in the City effective on January 7, 2016; and

WHEREAS, an administrative error resulted in imposition of the lower (expired) impact fees as a condition of development during the period from January 7, 2016 and March 17, 2016; and

WHEREAS, as a result of this error, one application for development vested to the pre-January 7, 2016 SIF's; and

WHEREAS, pursuant to the Land Use Petition Act, Chapter 36.70C RCW, the City believes it was precluded from correcting the error 21 days after the applications were approved; and

WHEREAS, the City, and the District having differing opinions regarding the City's options to remedy the error and the City's liability, the City nevertheless acknowledge the error and wish to resolve it in a manner that reinforces the relationship between the District and the City and resolves the matter; and

WHEREAS, the City and District acknowledge that the amount of the loss of SIF's is uncertain but that the District should recover lost SIF's that can be demonstrated; and

WHEREAS, the City and District agree that this Interlocal Agreement resolves the aforementioned dispute.

NOW, THEREFORE, in consideration of the District's release of City and City's promises made herein, the parties agree as follows:

AGREEMENT

1. AUTHORITY AND PURPOSE. This Interlocal Agreement is entered into pursuant to the authority of RCW Chapter 39.34. The purpose of this Interlocal Agreement is to resolve a dispute between the District and City related to applying incorrect school impact fees to a residential development.

2. TERM. This Interlocal Agreement shall become effective upon signature by both parties, and will expire as provided for in Paragraph 8.

3. ADMINISTRATION; PROPERTY; FINANCING; BUDGETS. This Interlocal Agreement does not establish or create a separate legal or administrative entity or a joint board to accomplish the purposes hereof. The City and the District shall be jointly responsible for administering the performance herein. The City and the District will not acquire any jointly-owned real or personal property in connection with performance of this Interlocal Agreement. The City and the District shall each be responsible for their own individual financial costs of performance of this Interlocal Agreement. No joint budget will be prepared to carry out the performance of this Interlocal Agreement.

Any real or personal property used or acquired by the City or the District in connection with performance of this Interlocal Agreement shall be disposed of by that Party as it shall determine in its discretion.

4. PRINCIPLES. This Interlocal Agreement shall be based on the following principles:

- A. Cooperative relationships between the City and District benefit both organizations and the residents of the City and District.
- B. The City acknowledges an error in applying incorrect School Impact Fees (SIF) to certain residential applications.
- C. The City denies legal liability for the error.
- D. The District disputes the City's denial of legal liability.

- E. Notwithstanding this dispute, the City and District agree that the District shall be made whole to the extent the District does not actually receive SIFs that it otherwise would have received if no error occurred.
- F. In consideration for making the District whole pursuant to this Interlocal Agreement, the District releases the City from any further liability for failing to collect the Legislated Fee.

5. SUBSTANTIVE AGREEMENTS

A. SIF Credits to the District.

- (1) City and District have agreed that the amount of SIF's that should have been applied to the City development approval issued between January 7, 2016 and March 17, 2016 is \$1,833,840 ("Legislated SIF").
- (2) The SIF amount that the development approvals issued between January 7, 2016 and March 17, 2016 vested to is \$642,720 ("Vested SIF").
- (3) The Developer of Trio Pointe Apartments has successfully obtained building permits for all 240 units and paid \$647,290 in SIFs, \$4,570 more than the vested amount.
- (4) The total SIFs paid is subtracted from the Legislated SIF to obtain the "Actual Credits" of \$1,186,550 due to the District under this Agreement (Exhibit A)
- (5) An Actual Credit shall have a duration of fifteen (15) years from the date of its creation by issuance of a building permit after which it shall expire.
- (6) The Approved Application is listed in Exhibit "A." If the project should lose its vesting through lapse of time or for any other reason, the City will apply the SIF then in effect for any future development applications at the project sites.

B. Use of Actual Credits.

- (1) The District may use the Actual Credits to offset development and building fees for new development and construction proposed by the District, or other uses as described in Subsection C below. Fees that the Actual Credits may be used for include land use review fees, building permit review fees, building permit fees, and engineering review fees.
- (2) Actual Credits must be applied to a District project, or put to another use as authorized in Subsection C, within fifteen years of the date the actual credit is established.

C. Other Uses.

By written mutual agreement of the City and District, the City may contribute real estate, partner with the District on capital facility improvements that would otherwise be the responsibility of the District (such as street frontage

improvements, utility extension, and the like) or for facilities that provide broad community benefit (such as playgrounds, parks or sports field improvements) in a manner that relieves the District of these expenses and are within the Actual Credit amount. In the event of such mutual agreement the City and the District shall set an amount representing the value of the City's contribution and the total of the outstanding Actual Credits shall be reduced by said amount.

6. ADMINISTRATION.

A. Use of Credit. The District shall sign a statement indicating its request to apply Actual Credits to an eligible review or permit under 5(B)(1). The City Manager and Superintendent may agree by separate written agreement to apply the credit pursuant to 5(C).

B. Statements. Upon application of all or partial Actual Credits to an eligible review, permit, or other uses described in 5(C), City shall within thirty (30) days send a letter to the District to confirm the amount of any remaining SIF Credits.

7. DISPUTE RESOLUTION. In the event of a dispute between the City and the District regarding performance of this Interlocal Agreement:

A. Designated representatives of the Vancouver City Manager and the Evergreen District Superintendent shall review such dispute and options for resolution. Any dispute not resolved by the representatives shall be referred to the City Manager and the Superintendent. The decision of the City Manager and the Superintendent shall be final as between the parties.

B. Any dispute concerning the terms of this Interlocal Agreement that cannot be resolved by the negotiation process set forth herein shall be submitted to mediation with the District and City agreeing to a neutral mediator. Both parties hereby agree to participate in such mediation in good faith, but nothing herein obligates either Party to resolve the dispute in such mediation.

8. DURATION. This Interlocal Agreement shall expire when the last Actual Credit is used and all Contingent Credits have lost vesting status.

9. RELEASE. By execution of this Interlocal Agreement, the District releases City from any liability in relation to any claim the District may have for failure to collect the Legislated Fee from the developments identified in this Agreement. The City represents that under its best information and belief that the residential development approvals listed in Exhibit "A" is the complete list of development applications approved with the Applied SIF. The District is not releasing the City from liability for errors that have not been identified and that are not addressed in this Agreement. If the City discovers it made similar errors in assessing SIFs on additional developments, the District will release the City from any liability it may have for failure to collect the correct SIF

provided the City issues the District a Credit in the same manner as is being done for the developments that are addressed in this Agreement.

10. AMENDMENTS. This Interlocal Agreement shall not be modified or amended in any manner except by an instrument in writing executed by the Parties hereto after approval by the legislative bodies of each of the Parties.

11. ASSIGNMENT; BENEFIT OF AGREEMENT. No Party hereto shall assign its rights or obligations under this Interlocal Agreement without the prior written consent of the other Parties hereto. This Interlocal Agreement shall inure to the benefit of and be binding upon the Parties and their successors and permitted assigns.

12. NOTICES. All communications, notices and demands of any kind which are required by this Interlocal Agreement shall be in writing and shall be deemed given when deposited in the U.S. mail, first class postage prepaid, to the following addresses or to such other addresses as the Parties shall from time to time give notice to the other Parties:

If to the City:

City of Vancouver
P.O. Box 1995
210 East 13th Street
Vancouver, WA 98660-3230
Attn: City Manager

If to the District:

Evergreen School District
PO Box 8910
13501 NE 28th Street
Vancouver, WA 98668-8910
Attn: Superintendent

13. COUNTERPARTS. This Interlocal Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

14. FILING THIS INTERLOCAL AGREEMENT. Within five (5) days from the date of execution of this Interlocal Agreement, a copy thereof shall be filed with the County Auditor of the County. The City and the County agree that there shall be three (3) duplicate originals of this Interlocal Agreement procured and distributed for signature by the necessary officials of the parties. Upon execution, one executed original of this Interlocal Agreement shall be retained by the Vancouver City Clerk and one shall be retained by each of the other parties. The Vancouver City Clerk shall cause a copy of this Interlocal Agreement to be posted on the City website pursuant to Chapter 32, Laws of Washington 2006 (RCW 39.34.040). Upon execution of the originals and posting of a copy on the City's website, each such duplicate original shall constitute an agreement binding upon all parties.

15. LIMITATION OF RIGHTS. Nothing expressed in or to be implied from this Interlocal Agreement is intended to give, or shall be construed to give, any person other than the Parties hereto, and their permitted successors and assigns, any

benefit or legal or equitable right, remedy or claim under or by virtue of this Interlocal Agreement. The City and the District shall be deemed to be third-party beneficiaries of this Interlocal Agreement.

16. HEADINGS. The headings herein are solely for convenience of reference and shall not constitute a part of this Interlocal Agreement nor shall they affect its meaning, construction or effect.

17. GOVERNING LAW. This Interlocal Agreement shall be construed in accordance with and governed by the Constitution and laws of the State of Washington applicable to contracts made and performed within such State.

18. VENUE. The venue for any dispute arising under this Interlocal Agreement shall be in the Superior Court of the State of Washington for Clark County, Washington.


19. NO PERSONAL LIABILITY. Notwithstanding anything contained to the contrary in any provision of this Interlocal Agreement, it is specifically agreed and understood that there shall be absolutely no personal liability on the part of any individual officers or directors of the City or the District with respect to any of the obligations, terms, covenants, and conditions of this Interlocal Agreement.


20. SEVERABILITY. If any term or provision of this Interlocal Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Interlocal Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.


IN WITNESS WHEREOF, the Parties have executed this Interlocal Agreement the date noted below.

CITY OF VANCOUVER

EVERGREEN SCHOOL DISTRICT

By: 
City Manager
Date: 12-18-17

By: 
Superintendent
Date: 1-09-2018

Approved as to form:

City Attorney

Approved as to form:

District Counsel

Attest: 
City Clerk

Attest:

Secretary

Exhibit A

Land Use Applications Subject to Interlocal Agreement

SIF Credits Granted to Evergreen School District

Project Name	Project Number	# Units	Legislated SIF	Vested SIF	SIFs Paid by Developer	Actual SIF Credit
Trio Pointe (formerly 3 rd Street Apts.)	LUP- 60663	240	\$1,833,840 \$7,641/unit	\$642,720 \$2,678/unit	\$647,290*	\$1,186,550

*For four units, Developer paid \$1,142.50 more per unit than Vested SIF rate which reduced total Actual SIF Credit to the District by a total of \$4,570 (see Exhibit B)

Exhibit B

Actual SIF Credit to District based on SIF Paid by Developer for Trio Pointe Building Permit Applications

Building Permit #	Project Name	No. Units	Issued Date	Evergreen SIF Paid	Legislated Evergreen SIF	Difference (Actual SIF Credit to Evergreen)
CMI-204687	TRIO POINTE BLDG A	24	1/26/2017	\$64,272.00	\$183,384.00	\$119,112.00
CMI-204722	TRIO POINTE BLDG B	20	1/26/2017	\$53,560.00	\$152,820.00	\$99,260.00
CMI-215588	TRIO POINTE BLDG C	24	3/2/2017	\$64,272.00	\$183,384.00	\$119,112.00
CMI-215564	TRIO POINTE BLDG D	20	3/6/2017	\$53,560.00	\$152,820.00	\$99,260.00
CMI-215565	TRIO POINTE BLDG E	24	3/6/2017	\$64,272.00	\$183,384.00	\$119,112.00
CMI-214307	TRIO POINTE BLDG F	24	4/17/2017	\$64,272.00	\$183,384.00	\$119,112.00
CMI-208266	TRIO POINTE BLDG G	2	5/4/2017	\$5,356.00	\$15,282.00	\$9,926.00
CMI-214308	TRIO POINTE BLDG H	24	4/17/2017	\$64,272.00	\$183,384.00	\$119,112.00
CMI-213838	TRIO POINTE BLDG I	2	5/4/2017	\$5,356.00	\$15,282.00	\$9,926.00
CMI-214273	TRIO POINTE BLDG J	24	4/25/2017	\$64,272.00	\$183,384.00	\$119,112.00
CMI-213869	TRIO POINTE BLDG K	2	5/4/2017	\$5,356.00	\$15,282.00	\$9,926.00
CMI-213872	TRIO POINTE BLDG L	2	5/4/2017	\$5,356.00	\$15,282.00	\$9,926.00
CMI-216019	TRIO POINTE BLDG M	2	3/17/2017	\$7,641.00*	\$15,282.00	\$7,641.00
CMI-215563	TRIO POINTE BLDG N	20	3/2/2017	\$53,560.00	\$152,820.00	\$99,260.00
CMI-216018	TRIO POINTE BLDG O	2	3/17/2017	\$7,641.00*	\$15,282.00	\$7,641.00
CMI-204720	TRIO POINTE BLDG P	20	1/26/2017	\$53,560.00	\$152,820.00	\$99,260.00
CMI-216017	TRIO POINTE BLDG Q	2	3/17/2017	\$5,356.00	\$15,282.00	\$9,926.00
CMI-208265	TRIO POINTE BLDG R	2	3/17/2017	\$5,356.00	\$15,282.00	\$9,926.00
TOTAL		240		\$647,790.00	\$1,833,840.00	\$1,186,550.00

* Vested SIF was \$2,678 per unit (\$5,356 for two units), but developer paid \$3,820.50 per unit (\$1,142.50 more than the vested amount) in SIF for four of the units, which results in a total SIF Credit to ESD of \$1,186,550 instead of \$1,191,120 (difference of \$4,570).