CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: July 9, 2018

AGENDA ITEM:	
Mutual Agreement Regarding Application of Traffic Impact Fee Refund	
PREPARED BY:	**DIRECTOR APPROVAL:**
Chris Holland, Planning Manager	
DEPARTMENT:	
Community Development	
ATTACHMENTS:	
1. MMC Chapter 22D.030 *Traffic Impact Fees and Mitigation* 2. Mutual Agreement Regarding Application of Traffic Impact Fee Refund	
BUDGET CODE:	**AMOUNT:**
SUMMARY:	

Fernandez Investments, LLC paid the City of Marysville $173,910 in traffic impact fees (TIF) for traffic impact caused with the construction of Marysville Ford. Pursuant to MMC 22D.030.070(5)(b) Fernandez Investments, LLC made an application for a traffic impact fee exemption.

Marysville Ford has generated to the City an average annual City of Marysville portion sales and use tax revenue of at least $200,000 based upon the three-year period commencing for the date of certificate of occupancy. Therefore, Fernandez Investments, LLC is entitled to a refund of 50% of the TIF.

Fernandez Investments, LLC submitted an application for construction of a new auto dealership, known as Marysville Auto Center. Marysville Auto Center is subject to payment of TIF in the amount of $67,488. Fernandez Investments, LLC desires to enter into an agreement for the refund from Marysville Ford to be applied to the TIF for Marysville Auto Center. The remainder of the fees not used to pay TIF for Marysville Auto Center will be refunded to Fernandez Investments, LLC, along with accrued interest.

RECOMMENDED ACTION:

Authorize the Mayor to sign and execute the *Mutual Agreement Regarding Application of Traffic Impact Fee Refund,* transferring $67,488 of the refund for Marysville Ford and applying it to the traffic impact fees owed for Marysville Auto Center with the remainder of the fees refunded to Fernandez Investments, LLC, along with accrued interest.

Chapter 22D.030
TRAFFIC IMPACT FEES AND MITIGATION

Sections:

22D.030.010 Findings.

It is hereby found that the acquisition, construction, and improvement of roads to serve new developments in the city of Marysville is a major burden upon city government; that the city is experiencing a rapid, large-scale increase in intensity of land use and in population growth; that rapid growth creates large “front-end” demands for city services, including roads, and causes increased road usage; that existing and projected city funds are not adequate to meet the public’s projected road needs; that failure to ensure that road improvements are made as traffic increases causes severe safety problems, impedes commerce and interferes with the comfort and repose of the public; and that the provisions of this title are necessary to preserve the legislature’s intent that the city, in the exercise of reasonable discretion, retain ultimate responsibility for city services and its financial integrity.

It is further found that the city has the power under existing law to condition development and require road improvements reasonably related to the traffic impact of a proposed development, and that it is appropriate and desirable to set out in this title what will be required of developments, and to establish hereby a uniform method of treatment for similar development impact on road systems. It is further found that the State Growth Management Act (GMA) and RCW 36.70A.070(6)(e) require that “local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development” and that “For the purposes of this subsection [RCW 36.70A.070(6)], ‘concurrent with development’ shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.” It is further

found that this title is consistent with and implements the comprehensive plan adopted pursuant to Chapter 36.70A RCW.

It is further found that the total benefits of certain transportation demand management measures in reducing marginal trips are projected to significantly outweigh the total costs. It is further found and declared that the regulations contained in this title are necessary for the protection and preservation of the public health, safety and general welfare. (Ord. 2852 § 10 (Exh. A), 2011).

22D.030.020 Declaration of purpose.

The purpose of this title is to ensure that public health, safety and welfare will be preserved by having safe and efficient roads serving new and existing developments by requiring all development, as defined in MMC 22D.030.040(10), to mitigate traffic impacts, which may include a proportionate share payment reasonably related to the traffic impact of the proposed development and construction of road improvements and dedication of rights-of-way reasonably necessary as a result of the direct traffic impact of proposed developments.

This title is intended to ensure that city policy for the provision of safe and adequate access and the allocation of responsibility for immediate or future road improvements necessitated by new development is fairly and consistently applied to all developments. The requirements of this title apply to all developments and road systems meeting the definitions of MMC 22D.030.040. Mitigation of impacts on state highways, city streets or county roads will be required in accordance with the provisions of this title when the WSDOT, city or county has reviewed the development's impact under its policies adopted pursuant to Chapter 36.70A RCW or its formally designated environmental policies, as applicable, and has recommended to the city that there be a requirement to mitigate the impact; and in the event of traffic impacts on state highways or county roads there is an agreement between the city and the other affected agency or jurisdiction which specifically addresses impact identification, documentation, and mitigation, and which references the policies adopted pursuant to Chapter 36.70A RCW and environmental policies formally designated by the agency or jurisdiction as possible bases for the exercise of authority under Chapter 36.70A RCW or State Environmental Policy Act (SEPA).

This title requires the analysis and mitigation of a development's traffic impact on the public road system. In order to quantify the continuing need for road improvements on the public road system anticipated by projected growth, the public works department is authorized to develop and update a capital facilities element of the comprehensive plan based on and consistent with the comprehensive plan's transportation element. The capital facilities element shall be used in evaluating the traffic impact of developments and determining necessary mitigation of such impacts. (Ord. 2852 § 10 (Exh. A), 2011).

22D.030.030 Relationship to environmental impacts.

The requirements of this title, together with the comprehensive plan adopted pursuant to Chapter 36.70A RCW and MMC Title 22, and other development regulations and policies that may be adopted, constitute the policy of the city under the GMA and SEPA for the review of development and the determination of significant adverse environmental impacts and imposition of mitigation requirements due to the impacts of development on the transportation system. Measures required by this title shall constitute adequate mitigation of adverse or significant adverse environmental impacts on the road system for the purposes of Chapter 22E.030 MMC to the extent that the director determines the specific impacts of the development are adequately addressed by this title in accordance with Chapter 43.21C RCW as allowed by Chapter 36.70B RCW.

As a policy of the city, the provisions of this title do not limit the ability of the approving authority to impose mitigation requirements for the direct impacts of development on state highways, or county streets, where the other affected jurisdiction lies outside the road system of a development, as defined by this title; provided, that there is an agreement between the city and another affected jurisdiction which specifically addresses level of service standards, impact identification, documentation, and mitigation, and which references the environmental policies formally designated by the agency or jurisdiction and it is determined that an adverse environmental impact would result from the approval of a development without the imposition of such additional mitigation measures. In accordance with RCW 43.21C.065 and 82.02.100, a person required to make a proportionate share mitigating payment under a SEPA payment program or pay an impact fee under a GMA mandatory impact fee program shall only be required to make a payment or pay a fee pursuant to either SEPA or the GMA, but not both for the same system improvements. (Ord. 2852 § 10 (Exh. A), 2011).

22D.030.040 Definitions.

(1) “Approving authority” means the city employee, agency or official having authority to issue the approval or permit for the development involved.

(2) “Arterial unit” means a road, segment of a road, or portion of a road or a system of roads, or intersection, consistent with the level of service methodology adopted in the city transportation element of the comprehensive plan and consistent with the criteria established by the director, for the purpose of making level of service concurrency determinations.

(3) “Arterial unit in arrears” means any arterial unit operating below the adopted level of service standard adopted in the transportation element of the comprehensive plan, except where improvements to such a unit have been programmed in the city six-year transportation improvement program adopted pursuant to RCW 36.81.121 with funding identified that would remedy the deficiency within six years.

(4) “Capacity improvements” means any improvements that increase the vehicle and/or people moving capacity of the road system.

(5) “Capital facilities plan” means all documents comprising the capital facilities element of the comprehensive plan that, for capital facilities, consists of an inventory of facilities owned by public entities, forecasts of future needs, new and expanded facilities, and a multi-year financing plan, adopted pursuant to Chapter 36.70A RCW.

(6) “Comprehensive plan” means the generalized, coordinated land use policy statement of the city council adopted pursuant to Chapter 36.70A RCW, which may include a land use plan, a capital facilities plan, a transportation element, subarea plans and any such other documents or portions of documents identified as constituting part of the comprehensive plan under Chapter 36.70A RCW.

(7) “Dedication” means conveyance of land to the city for road purposes by deed or some other instrument of conveyance or by dedication on a duly filed and recorded plat or short plat.

(8) “Department” means either the city of Marysville public works or community development department, whichever department is relevant to the city action being referred to in this title.

(9) “Developer” means the person applying for or receiving a permit or approval for a development as defined in subsection (10) of this section.

(10) “Development” means all the subdivisions, short subdivisions, industrial or commercial building permits, conditional use permits, binding site plans (including those associated with rezone applications), or building permits (including building permits for multifamily and duplex residential structures, and all similar uses), changes in occupancy and other applications pertaining to land uses that:

(a) Require land use permits or approval by the city of Marysville; or

(b) Which are located in areas of the county or other cities and which will impact the city of Marysville’s public road system.

“Development” does not include building permits for single-family residential dwellings, attached or detached accessory apartments, or duplex conversions, on existing tax lots.

(11) “Direct traffic impact” means any new vehicular trip added by new development to its road system as defined in subsection (20) of this section.

(12) “Director” means the director of the city of Marysville department of either public works or community development or his/her authorized designee, whichever director is relevant to the city action being referred to in this title.

(13) “Frontage improvements” means improvements on roadways abutting a development and tapers thereto required as a result of a development. Generally, frontage improvements shall consist of

appropriate base materials; curb, gutter, and sidewalk; storm drainage improvements; bus pullouts and waiting areas where necessary; bicycle lanes and bicycle paths where applicable; and lane improvements.

(14) “Highway capacity manual” means the current Highway Capacity Manual, Transportation Research Board, National Research Council, 2101 Constitution Avenue, Washington, D.C.; amendments thereto; and any supplemental editions or documents published by the Transportation Research Board adopted by the U.S. Department of Transportation, Federal Highway Administration.

(15) “Inadequate road condition” means any road condition, whether existing on the road system or created by a new development’s access or impact on the road system, which jeopardizes the safety of road users, including nonautomotive users, as determined by the city engineer in accordance with the department policy and procedure for the determination of inadequate road conditions.

(16) “Level of service (LOS)” means a qualitative measure describing operational conditions within a traffic stream, and the perception thereof by road users. Level of service standards may be evaluated in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety. The highway capacity manual defines six levels of service for each type of facility for which analysis procedures are available. They are given letter designations, from A to F, with level-of-service A representing the best operating condition, and level-of-service F the worst. For the purposes of this title, level of service will be measured only on arterial units.

(17) “Off-site road improvement” means improvement, except a frontage improvement, to an existing or proposed city or county road outside the boundaries of a development, which improvement is required or recommended in accordance with this title.

(18) “Public agency” means any school district, public water, sewer or utility district; fire district; airport district; public transportation benefit area; or local government agency seeking a land use permit or approval reviewed under this title.

(19) “Road” means an open, public way for the passage of vehicles that, where appropriate, may include pedestrian, equestrian and bicycle facilities. Limits include the outside edge of sidewalks, or curbs and gutters, paths, walkways, or side ditches, including the appertaining shoulder and all slopes, ditches, channels, waterways, and other features necessary for proper drainage and structural stability within the right-of-way or access easement.

(20) “Road system” means those existing or proposed public roads, whether state, county or city (including freeway interchanges with county roads or city streets and the ramps for those interchanges but excluding freeway mainlines), within the transportation service area.

(21) “Transportation element” means the element of the city comprehensive plan that for transportation consists of goals and policies, an inventory of facilities and services, adopted level of service standards, an analysis of deficiencies and needs, system improvements and management strategies and a multi-year financial plan, adopted pursuant to Chapter 36.70A RCW.

(22) “Transportation service area” means a geographic area of the city, as defined in the transportation element, identified for the purpose of evaluating the transportation impacts of development, determining proportionate shares of needed transportation improvements and allocating revenue to transportation improvement projects.

(23) “WSDOT” means the Washington State Department of Transportation. (Ord. 2852 § 10 (Exh. A), 2011).

22D.030.050 Road policy – General provisions.

(1) Applicability to Development – General. Any application for approval of a permit for a development in the city of Marysville is subject to the provisions of this title.

(2) Director’s Recommendation, Approval.

(a) In approving or permitting a development, the approving authority shall consider the director’s recommendations and act in conformity with this title.

(b) The director shall only recommend approval of a development if, in the director’s opinion, adequate provisions for public roads, access, and mitigation of the transportation impacts of the development are made as provided in the city’s development regulations, SEPA, and this title.

(c) The director shall only recommend approval of a development if the development is deemed to be concurrent in accordance with MMC 22D.030.070(6).

(3) Excessive Expenditure of Public Funds. If the location, nature, and/or timing of a proposed development necessitates the expenditure of public funds in excess of those currently available for the necessary road improvement or inconsistent with priorities established to serve the general public benefit, and provision has not otherwise been made to meet the mitigation requirements as provided in this title, the city may refuse to approve or grant a permit for development. As an alternative, the city may allow the developer to alter the proposal so that the need for road improvement is lessened or may provide the developer with the option of bearing all or more than the development’s proportionate share of the required road improvement costs, in which case the developer may attempt to recover its investment from subsequent developers whose projects utilize the road improvement.

(4) Development Mitigation Obligations. Any application for approval of a permit for a development shall be reviewed to determine any requirements or mitigation obligations that may be applicable for the following:

(a) Impact on road system capacity;

(b) Impact on specific level of service deficiencies;

(c) Impact on specific inadequate road condition locations;

(d) Frontage improvements requirements;

(e) Access and transportation system circulation requirements;

(f) Dedication or deeding of rights-of-way requirements;

(g) Impact on state highways, and other cities' and counties' roads;

(h) Transportation demand management measures.

(5) Road System Capacity Requirements. The direct traffic impacts of any development on the capacity of all arterials and nonarterials in the road system identified as needing future capacity improvements in the currently adopted transportation element will be mitigated either by constructing road improvements which offset the traffic impact of the development or by paying the development's share of the cost of the future capacity improvements.

(6) Level of Service Standards.

(a) As required by RCW 36.70A.070(6)(b), standards for levels of service on city arterials have been adopted by the city in its comprehensive plan adopted pursuant to the State Growth Management Act. The department will plan, program and construct transportation system capacity improvements for the purpose of maintaining these adopted level of service standards in order to facilitate new development that is consistent with the city's comprehensive plan.

(b) In accordance with RCW 36.70A.070(6) (e), no development will be approved which would cause the level of service on any arterial unit to fall below the adopted level of service standards unless improvements are programmed and funding identified which would remedy the deficiency within six years.

(c) When the city council determines that excessive expenditure of public funds is not warranted for the purpose of maintaining adopted level of service standards on an arterial unit, the city council may designate, by motion, such arterial unit as being at ultimate capacity. Improvements needed to address operational and safety issues may be identified in conjunction with such ultimate capacity designation.

(d) Level of service standards for arterial units which have been designated by the city council as ultimate capacity arterial units, and that directly connect state routes with a city, may be

determined jointly by the state, county and city through an interlocal agreement.

(e) In order to promote efficiency in the transportation system and to maximize the benefits received from public investment through increased use of transit, ridesharing, and nonmotorized transportation, all new developments in the urban area shall provide a projection of sufficient transportation demand management measures to remove a minimum of five percent of a development's p.m. peak-hour trips from the road system.

(7) Inadequate Pre-Existing Road Conditions.

(a) Mitigation of impacts on inadequate pre-existing road conditions is required in order to improve inadequate roads in accordance with adopted standards, prior to dealing with the impacts of traffic from new development. If such inadequate conditions are found to be existing in the road system at the time of development application review and the development will put three or more p.m. peak-hour trips through the identified locations, the development will be approved only if provisions are made in accordance with MMC 22D.030.070 for improving the inadequate road conditions.

(b) The director or his/her authorized designee, in accordance with the department policy and procedure, will make determinations of road inadequacy for determination of inadequate road conditions.

(8) Frontage Improvements. All developments will be required to make frontage improvements in accordance with MMC 12.02A.090.

(9) Access and Transportation Circulation Requirements. All developments shall be required to provide for access and transportation circulation in accordance with the comprehensive plan and the development regulations applicable to the particular development, to design and construct such access in accordance with the adopted engineering design and development standards, and to improve existing roads that provide access to the development in order to comply with adopted design standards. Access to state highways and city roads shall be in accordance with the applicable state or city standards and requirements.

(10) Right-of-Way Requirements. As provided for by RCW 82.02.020, all developments, as a condition of approval, will be required to deed or dedicate property, as appropriate pursuant to MMC 12.02A.110, when to do so is found by the director or a city hearing entity to be reasonably necessary as a direct result of the proposed development, for improvement, use or maintenance of the road system serving the proposed development.

(11) State Highways, Cities, and Counties.

(a) Any level of service standards and concurrency requirements established in accordance with

RCW 36.70A.070 for state highways will be addressed by a letter of understanding or an interlocal agreement between the city and WSDOT. All developments will be required to mitigate impacts that are under the jurisdiction of the WSDOT that are part of the transportation service area. The mitigating measures recommended by WSDOT will be imposed as a condition of development approval to the extent that such requirements are reasonably related to the impact of the proposed development and consistent with the terms of a letter of understanding or an interlocal agreement between the city and WSDOT.

(b) Any level of service standards and concurrency requirements established in accordance with RCW 36.70A.070 for roads under the jurisdiction of other cities or the county will be addressed by an interlocal agreement between the city and the other city or county. The measures recommended by the county or other city will be imposed as a condition of development approval to the extent that such requirements are reasonably related to the impact of the proposed development and consistent with the terms of an interlocal agreement between the city and the other agency.

(12) Director Authorization for Administrative Policies and Technical Procedures. The director is hereby authorized to produce and maintain administrative policies and technical procedures in order to administer this title. The policies and procedures shall cover the various aspects of processing land use applications and shall set forth any necessary procedural requirements for developers to follow in order for their applications to be processed by staff in an efficient manner. The director shall produce administrative policies and technical procedures on at least the following topics:

(a) Traffic studies: scoping, elements, processing;

(b) Level of service determination: methodology, data collection;

(c) Transit compatibility: transit supportive criteria;

(d) Inadequate road conditions: criteria for identification;

(e) Frontage improvements: standards, variables;

(f) Mitigation measures: extent, timing, agreements.

(13) Development Permit Application Completeness. For purposes of this title, permit applications for development shall be determined to be complete in accordance with the complete application provisions as defined in the applicable development regulations in accordance with Chapter 36.70B RCW. A development permit application shall not be considered complete until all traffic studies or data required in accordance with MMC 22D.030.060 and/or specified in the preapplication meeting required by MMC 22G.010.030 are received. Review periods and time limits shall be as established in Chapter 22G.010 MMC in accordance with RCW 36.70A.065 and 36.70A.440 as recodified by ESHB

1724, Chapter 347, Laws of 1995. (Ord. 2852 § 10 (Exh. A), 2011).

22D.030.060 Traffic study.

(1) When Required. In order to provide sufficient information to assess a development's impact on the road system, developments adding three or more p.m. peak-hour trips will be required to provide a traffic study when it has been determined at the presubmittal meeting that there is not sufficient information existing in the department's database to adequately assess the traffic impacts of the development. The traffic study will consist of at least traffic generation and distribution. The director may require that additional information be provided on impacts of the development to level of service of affected streets, inadequate road conditions, adequacy of the proportionate share calculations of any voluntary payments required under this title to reasonably or adequately mitigate for impacts of the proposed development, and conformance with the adopted transportation element. The director shall determine at the preapplication conference the need for a study and the scope of analysis of any needed study. The director shall also determine if the traffic study may rely on the Institute of Transportation Engineers (ITE) Trip Generation Manual.

If, in the opinion of the director, there is sufficient information known about a development's road system from previous traffic studies, the director may waive the requirement for a traffic study and so state the finding in the preapplication meeting. In such cases, the existing information will be used to establish any necessary traffic mitigation requirements to be recommended in the review of the development. (Ord. 2852 § 10 (Exh. A), 2011).

22D.030.070 Determination and fulfillment of road system obligations.

(1) Determination of Developer Obligations.

(a) Applications which have a prior SEPA threshold determination establishing developer obligation for the transportation impacts at time of enactment of the ordinance codified in this title shall be vested under the development obligation identified under SEPA.

(b) A determination of developer obligation shall be made by the city before approval of preliminary plats, short subdivisions, and conditional use permits. For binding site plans (including those associated with rezone applications) and commercial permits, the determination of developer obligation shall be made prior to issuance of a building permit.

(c) Mitigation measures imposed as conditions of approval of conditional use permits or binding site plans shall remain valid until the expiration date of the concurrency determination for a development. Any building permit application submitted after the expiration date shall be subject to full reinvestigation of traffic impacts under this title before the building permit can be issued. Determination of new or additional impact mitigation measures shall take into consideration, and may allow credit for, mitigation measures fully accomplished in connection with approval of the

conditional use permit, the binding site plan, or prior building permits pursuant to a binding site plan, only where those mitigation measures addressed impacts of the current building permit application.

(d) The director, following review of any required traffic study and any other pertinent data, shall inform the developer in writing what the development's impacts and mitigation obligations are under this title. The developer shall make a written proposal for mitigation of the development's traffic impact, except when such mitigation is by payment of any impact fee under the authority provided to the city under RCW 82.02.050(2). When the developer's written proposal has been reviewed for accuracy and completeness by the director, the director shall make a recommendation to the community development department as to the concurrency determination and conditions of approval or reasons for recommending denial of the land use application, citing the requirements of this title.

(e) For developments which require a public hearing, a developer must submit a written proposal to the director for mitigation of the development's traffic impact, except where such mitigation is by payment of any impact fee under the authority provided to the city under RCW 82.02.050(2). The written proposal must be submitted after any required traffic study has been reviewed and the director has stated the mitigation requirements pursuant to this chapter.

(f) Any request to amend a proposed development, following the determination of developer obligations and approval of the development, which causes an increase in the traffic generated by the development, or a change in points of access, shall be processed in the same manner as an original application and determined to be a substantial project revision, except where written concurrence is provided by the community development director that such request may be administratively approved.

(2) Road System Capacity Requirements.

(a) All developments must mitigate their impact upon the future capacity of the road system either by constructing off-site road improvements which offset the traffic impact of the development or by paying the development's proportionate share cost of the future capacity improvements as set forth in subsection (3) of this section.

(b) Construction Option – Requirements.

(i) If a developer chooses to mitigate the development's impact to the road system capacity by constructing off-site road improvements, the developer must investigate the impact, identify improvements, and offer a construction plan to the director for construction of the off-site improvements.

(ii) In cases where two or more developers have agreed to fully fund a certain improvement, the proportionate sharing of the costs shall be on any basis that the developers agree among themselves would be equitable. Under such an arrangement, the terms of the agreement shall be binding on each development as conditions of approval.

(iii) Any developer who volunteers to construct more than the development's share of the cost of off-site improvements may apply for a reimbursement contract.

(c) Payment Option – Requirements.

(i) If a developer chooses to mitigate the development's impact by making a proportionate share mitigating payment, the development's share of the cost of future capacity improvements will be equal to the development's peak-hour traffic (PHT) times the per-trip amount as identified in the transportation element of the comprehensive plan, as codified below.

(ii) If a developer chooses to mitigate the development's impact by making a proportionate share mitigating payment, the payment is required prior to building permit issuance unless the development is a subdivision or short subdivision, wherein the payment is required prior to the recording of the subdivision or short subdivision.

(iii) Any developer who volunteers to pay more than the development's share of the cost of off-site improvements may apply for a reimbursement contract.

(3) Traffic Impact Fee.

(a) The proportionate share fee amount shall be calculated in accordance with the formula established in Table I:

Table I:

A. Formula

Step 1. Calculate total transportation plan costs (20-year).

Step 2. Subtract costs assigned to other agencies = total city of Marysville costs.

Step 3. Subtract city-funded noncapacity projects from total city of Marysville costs.

Step 4. Subtract LID or other

	separate developer funding sources = capacity added projects.
Step 5.	Subtract city share for external capacity added traffic.
Step 6.	Calculate applied discount.

The fee amount resulting from Step 5 is the required traffic impact fee payment.

(b) Data needed for calculation of the fee amount shall be provided in the adopted transportation element and street capital facility plan contained within the adopted city comprehensive plan, which data shall be updated at least annually.

(4) Temporary Enhanced Discount. For a period of three years from the effective date of the ordinance codified in this section, the discount referenced in Step 6 of Table I above (and which is based on data contained in Appendix A, Traffic Impact Fee Methodology, of the city's Transportation Element) shall be adjusted from seven percent to 22 percent. From and after three years of the effective date of the ordinance codified in this section the subject discount shall automatically revert to seven percent without further action of the Marysville city council.

(5) Traffic Impact Fee Exemption.

(a) Traffic Impact Fee Exemption Established. Pursuant to RCW 82.02.060(2) and (4), there is hereby established an exemption from the traffic impact fee set forth in subsection (3) of this section for development activity which meets the criteria of subsection (5)(c) of this section.

(b) Application for Traffic Impact Fee Exemption. Any developer applying for or receiving a building permit which meets the criteria set forth in subsection (5)(c) of this section may apply to the director of public works or designee for an exemption from the traffic impact fee established pursuant to subsection (3) of this section. Said application shall be on forms provided by the city and shall be accompanied by all information and data the city deems necessary to process the application. To the extent it is authorized by law the city shall endeavor to keep all proprietary information submitted with said application confidential; provided, however, this section shall not create or establish a special duty to do so.

(c) Exemption Criteria. To be eligible for the traffic impact fee exemption established by this section, the applicant shall meet each of the following criteria:

(i) The applicant must be a new commercial retail business in the Marysville city limits. For purposes of this section, "new commercial retail business" shall mean any business which

sells retail goods and services which are subject to the retail sales tax provisions of Chapter 3.84 MMC and which applies for a building permit and which is subject to payment of traffic impact fees pursuant to this title.

(ii) Based on similar store sales or other reliable data, as determined by the city, the applicant must demonstrate that it is likely to generate to the city of Marysville average annual city of Marysville portion sales and use tax revenue of at least $200,000 based upon the three-year period commencing from date of certificate of occupancy.

(iii) The applicant must be a new retail business located within one of the following prescribed land use zones: light industrial (LI), general commercial (GC), community business (CB), mixed use (MU), downtown commercial (DC).

(d) Administration of Traffic Impact Fee Exemption.

(i) Upon acceptance of an application for exemption from traffic impact fees pursuant to subsection (5)(b) of this section, the applicant shall pay to the city the full amount of the traffic impact fees required pursuant to subsection (3) of this section. Following receipt of the traffic impact fees the city shall deposit and manage the fees as set forth in subsection (5)(e) of this section. At the expiration of a three-year period commencing from the date of issuance of a certificate of occupancy the public works director, with the assistance of the city finance director, shall determine if the average annual city of Marysville portion sales and use tax revenue received by the city meets the minimum amount stated in subsection (5)(c)(ii) of this section. The determination shall be based upon the sales tax reporting requirements of Chapter 3.84 MMC as it now reads or is hereafter amended.

(ii) In the event the three-year average annual city of Marysville portion sales and use tax revenue criterion of subsection (5)(c)(ii) of this section has been met as determined by the director of public works, there shall be an exemption of 50 percent from the traffic impact fees otherwise due pursuant to subsection (3) of this section. In such case, 50 percent of the amount paid to the city pursuant to subsection (5)(d)(i) of this section shall be refunded to the applicant, plus any accrued interest. The remainder of the funds deposited pursuant to subsection (5)(d) of this section shall belong to the city and shall be released to the city.

(iii) In the event the three-year average annual city of Marysville portion sales and use tax revenue criterion of subsection (5)(c)(ii) of this section has not been met, the traffic impact fee required under subsection (3) of this section shall immediately belong to and shall be released to the city; provided, however, in cases where the applicant has met at least 75 percent of the amount set forth in subsection (5)(c)(ii) of this section, the applicant shall receive a partial exemption which shall result in a refund of 25 percent of the amount paid to the city pursuant to subsection (5)(d) of this section plus any accrued interest. The

remainder of the funds deposited pursuant to subsection (5)(d) of this section shall belong to the city and shall be released to the city.

(iv) In cases where the applicant has not met either the three-year annual sales and use tax revenue criterion of subsection (5)(c)(ii) of this section or 75 percent thereof, all traffic impact fees paid pursuant to subsection (3) of this section shall belong to the city.

(v) By mutual agreement of the city and the applicant, any refund due under this section may be applied to an obligation or assessment owed by the applicant for city street improvement purposes, including, but not limited to, any obligation or assessment under a local improvement district for streets.

(e) Deposit and Management of Traffic Impact Fees. Traffic impact fees paid by an applicant pursuant to this section and the provisions of subsection (3) of this section shall be deposited by the city into a separate interest bearing account with any qualified public depository for local government as determined by the city. The account holder shall be the city of Marysville. The city may at its option withdraw up to 50 percent of said funds at any time for uses authorized by this title. All other funds deposited in that account shall be used exclusively for payment of refunds to eligible applicants pursuant to subsection (5)(d) of this section and balances, if any, to which the city is entitled. All refunds and interest to which an applicant is entitled shall be paid by the city within 120 days following the three-year period following the issuance of a certificate of occupancy.

(f) Appeals. Any applicant aggrieved by the determination of the director of public works as to whether the criteria of subsection (5)(c) of this section have been met or the eligibility for an exemption from subsection (3) of this section or the amount of refund to which an applicant is entitled pursuant to subsection (5)(d) of this section may file a written appeal to the city's land use hearing examiner as established by Chapter 22G.060 MMC. The city examiner is hereby specifically authorized to hear and decide such appeals and the decision of the hearing examiner shall be final action of the city and subject to appeal pursuant to MMC 22G.010.540.

(g) Application of Sales and Use Tax Revenue from Businesses Which Receive an Exemption or Partial Exemption.

(i) All sales and use tax received by the city from applicants who receive an exemption or partial exemption from the requirements of this title shall be deposited in a special account to be administered by the city. Said account shall be established to pay traffic impact fees that otherwise would have been paid had an exemption or partial exemption not been granted. Said amounts shall be expended for purposes authorized by and in accordance with the provisions of this title and the provisions of the city's capital improvement plan for streets. All sales and use tax revenues in excess of the amount paid as traffic impact fees

received by the city from the applicant may be deposited in the city's general fund and may be expended for any lawful purpose as directed by the city council.

(ii) Special Sales Tax Account. The city shall establish by separate ordinance a special sales tax account for the purposes set forth in subsection (5)(g)(i) of this section.

(6) Level of Service Requirements – Concurrency Determinations.

(a) The department shall make a concurrency determination for each development application. The concurrency determination will establish whether the development will impact an arterial unit where the level of service is below the adopted level of service standard, or cause the level of service on an arterial unit to fall below the adopted level of service standard, unless improvements are programmed and funding identified which would remedy the deficiency within six years. In either case, the development will be deemed not concurrent. The approving authority shall not approve any development that is not deemed concurrent under this section. Building permit applications for development within an approved rezone with binding site plan, nonresidential subdivision or short subdivision, for which a concurrency determination has been made in accordance with this section, shall be deemed concurrent; provided, that the building permit will not cause the approved traffic generation of the prior approval to be exceeded, there is no change in points of access, and mitigation required pursuant to the rezone with binding site plan, subdivision or short subdivision approval is performed as a condition of building permit issuance.

(i) The department shall make a concurrency determination upon receipt of a development's application submittal. The determination may change based upon revisions in the application. Any change in the development after approval will be resubmitted to the director, and the development will be re-evaluated for concurrency purposes.

(ii) Concurrency shall expire six years after the date of the concurrency determination, or, in the case of approved residential subdivisions, when the approval expires or when the application is withdrawn or allowed to lapse.

(iii) Building permits for a development must be issued prior to expiration of concurrency for the development. No additional concurrency determination shall apply to residential dwellings within a subdivision or short subdivisions recorded in compliance with this section.

(iv) If concurrency expires prior to building permit issuance, the director shall at the request of the developer consider evidence that conditions have not significantly changed and make a new concurrency determination in accordance with subsection (6)(a)(i) of this section.

(b) In determining whether or not to deem a proposed development as concurrent, the department shall analyze likely road system impacts on arterial units based on the size and location of the development. A development shall be deemed concurrent for the period prior to the expiration date of concurrency for the development.

(i) A development's forecast trip generation at full occupancy shall be the basis for determining the impacts of the development on the road system. The city will accept valid data from a traffic study prepared under MMC 22D.030.060.

(c) A concurrency determination made for a proposed development under this section will evaluate the development's impacts on any arterial units in arrears.

(i) If a development which generates 10 or more p.m. peak-hour trips, or a nonresidential development which generates five or more p.m. peak-hour trips, is proposed to affect an arterial unit in arrears, then the development may only be deemed concurrent based on a trip distribution analysis to determine the impacts of the development. Impacts shall be determined based on each of the following:

(A) If the trip distribution analysis indicates that the development will not place three or more p.m. peak-hour trips on any arterial units in arrears, then the development shall be deemed concurrent.

(B) If the trip distribution analysis indicates that the development will place three or more p.m. peak-hour trips on any arterial unit in arrears, then the development shall not be deemed concurrent except where the development is deemed concurrent in accordance with the options under subsection (6)(e) of this section.

(d) Any residential development that generates less than 10 p.m. peak-hour trips, or any nonresidential development that generates less than 10 p.m. peak-hour trips, shall be considered to have only minor impact on city arterials for purposes of a concurrency determination on impacts to level of service on arterial units and shall be deemed concurrent.

(e) Any development not deemed concurrent shall have options available to enable the development to be deemed concurrent as follows:

(i) A development which meets the department's criteria for transit compatibility, in accordance with the director's policy and procedure for transit compatibility under MMC 22D.030.050(12), shall be deemed concurrent if the impacted arterial unit in arrears meets the criteria for transit supportive design in accordance with the director's policy and procedure for transit compatibility, and if the level of service on the impacted arterial unit in arrears meets the LOS standards adopted within the comprehensive plan; and provided, that

the development can be deemed concurrent in accordance with all other provisions of subsection (6)(c) of this section.

(ii) A development may modify its proposal to lessen its impacts on the road system in such a way as to allow the city to deem the development concurrent under this section.

(iii) The city may deem such development concurrent based upon a written proposal signed by the proponent of the development and attached to the director's recommendation under MMC 22D.030.050(2), and referenced in the concurrency determination, as a condition of approval.

(A) Such proposal may include conditions which would defer construction of all or identified subsequent phases of a development until such time as the city has made or programmed capacity improvements which would remedy any arterial units in arrears.

(B) Such proposals may include conditions which would defer construction of all or identified subsequent phases of a development until such time as the developer constructs capacity improvements which would remedy any arterial units in arrears.

1. If a developer chooses to mitigate the development's impact by constructing off-site road improvements, the developer must investigate the impact, identify improvements, and offer a construction plan to the director for construction of the off-site improvements. Construction of improvements shall be in accordance with the engineering design and development standards.

2. In cases where two or more developers have agreed to fully fund a certain improvement, the proportionate sharing of the cost shall be on any basis that the developers agree among themselves would be equitable. Under such an arrangement, the terms of the agreement shall be binding on each development as conditions of approval.

3. Any developer who volunteers to construct off-site improvements of greater value than any proportionate share mitigating payment imposed under this title to mitigate the development's impact on the future capacity of city roads may apply for a reimbursement contract.

4. Any developer who chooses to mitigate a development's impact by constructing off-site improvements may propose to the council that a joint public/private partnership be established to jointly fund and/or construct the proposed improvements. The director will determine whether or not such a partnership is to be established.

5. Construction of capacity improvements under this section must be complete or under contract prior to the issuance of any building permits and must be complete prior to approval for occupancy or final inspection; provided, that where no building permit will be associated with a change in occupancy, then construction of improvements is required as a precondition to approval.

(f) Adopted Level of Service. The level of service for principal, minor, and collector arterials at signalized intersections shall be at a LOS consistent with the transportation element of the comprehensive plan using the operational method as a standard of review.

(7) Inadequate Road Condition Requirements.

(a) Regardless of the existing level of service, development which adds three or more p.m. peak-hour trips to an inadequate road condition existing on the road system, at the time of determination in accordance with subsection (1) of this section, or development whose traffic will cause an inadequate road condition at the time of full occupancy of the development will only be approved for occupancy or final inspection when provisions are made in accordance with this chapter for elimination of the inadequate road condition. The improvements removing the inadequate road condition must be complete or under contract before a building permit on the development will be issued and the road improvement must be complete before any certificate of occupancy or final inspection will be issued; provided, that where no building permit will be associated with a conditional use permit, then the improvements removing the inadequate road condition must be complete as a precondition to approval.

(b) The director shall determine whether or not a location constitutes an inadequate road condition. Any known inadequate road condition to which the development adds three or more p.m. peak-hour trips shall be identified as part of the director's recommendation under subsection (6) of this section.

(c) A development's access onto a public road shall be designed so as not to create an inadequate road condition. Developments shall be designed so that inadequate road conditions are not created.

(d) Construction Option – Requirements.

(i) If a developer chooses to eliminate an inadequate road condition by constructing off-site road improvements, the developer must investigate the impact, identify improvements, and offer a construction plan to the director for construction of the off-site improvements.

(ii) In cases where two or more developers have agreed to fully fund a certain improvement, the proportionate sharing of the costs shall be on any basis that the developers agree

among themselves would be equitable. Under such an arrangement, the terms of the agreement shall be binding on each development as conditions of approval.

(iii) Any developer who volunteers to construct off-site improvements of greater value than any proportionate share mitigating payment imposed under this title to mitigate the development's impact on the future capacity of city roads, which are contained within the cost basis, contained within the transportation element, or which are not part of the cost basis of any proportionate share mitigating payment imposed under this title to mitigate the development's impact on the future capacity of city roads, and therefore not credited against any proportionate share mitigating payment, may apply for a reimbursement contract.

(8) Special Circumstances. Where the only remedy to an arterial unit in arrears is the installation of a traffic signal, but signalization warrants contained in the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) are not met at present, developments impacting the arterial unit will be allowed to proceed without the installation of the traffic signal; provided, that all other warranted level of service and transit-related improvements are made on the arterial unit within the deficient level of service. Developments impacting such arterial units will not be issued building permits or occupancies (whichever comes first) until the improvements (not including the traffic signal) to the level of service deficient arterial unit are under contract or being performed. Such developments will be subject to all other obligations as specified in this title.

(9) Administration of Traffic Impact Fees.

(a) Any traffic impact fees made pursuant to this title shall be subject to the following provisions:

(i) Except as otherwise provided in this section and MMC Title 22, the traffic impact fee payment is required prior to building permit issuance unless the development is a subdivision or short subdivision, in which case the payment shall be made prior to the recording of the subdivision or short subdivision; provided, that where no building permit will be associated with a change in occupancy or conditional use permit then payment is required prior to approval of occupancy.

(ii) The traffic impact fees shall be held in a reserve account and shall be expended to fund improvements on the road system.

(iii) An appropriate and reasonable portion of traffic impact fees collected may be used for administration of this title.

(iv) The fee payer may receive a refund of such fees if the city fails to expend or encumber the impact fees within six years of when the fees were paid, or other such period of time established pursuant to RCW 82.02.070(3), on transportation facilities intended to benefit

the development for which the traffic impact fees were paid, unless the city council finds that there exists an extraordinary and compelling reason for fees to be held longer than six years. These findings shall be set forth in writing and approved by the city council. In determining whether traffic impact fees have been encumbered, impact fees shall be considered encumbered on a first-in/first-out basis. The city shall notify potential claimants by first class mail deposited with the United States Postal Service at the last known address of claimants.

(v) The request for a refund must be submitted by the applicant to the city in writing within 90 days of the date the right to claim the refund arises, or the date that notice is given, whichever is later. Any traffic impact fees that are not expended within these time limitations, and for which no application for a refund has been made within this 90-day period, shall be retained and expended on projects identified in the adopted transportation element. Refunds of traffic impact fees under this subsection shall include interest earned on the impact fees.

(b) Off-site improvements include construction of improvements to mitigate an arterial unit in arrears and/or specific inadequate road condition locations. If a developer chooses to construct improvements to mitigate an arterial unit in arrears or inadequate road condition problem, and the improvements constructed are part of the cost basis of any traffic impact fees imposed under this title to mitigate the development's impact on the future capacity of city roads, the cost of these improvements will be credited against the traffic impact fee amount; provided, that the amount of the cost to be credited shall be the estimate of the public works director as to what the city's cost would be to construct the improvement. Any developer who volunteers to pay for and/or construct off-site improvements of greater value than any traffic impact fees imposed under this title, to mitigate the development's impact on the future capacity of city roads, based on the cost basis contained within the transportation element, or which are not part of the cost basis of any traffic impact fees imposed under this title to mitigate the development's impact on the future capacity of city roads, and therefore not credited against the traffic impact fees, may apply for a reimbursement contract.

(c) Deferral of Impact Fees Allowed.

(i) Required payment of impact fees may be deferred to final inspection for single-family detached or attached residential dwelling.

(ii) Payment of required impact fees for a commercial building, or industrial building, may be deferred from the time of building permit issuance in accordance with following:

(A) Fifty percent of the impact fees shall be paid prior to approved occupancy of the structure; and

(B) The remaining 50 percent of the impact fees shall be paid within 18 months from the date of building occupancy, or when ownership of the property is transferred, whichever is earlier.

(iii) The community development department shall allow an applicant to defer payment of the impact fees when, prior to submission of a building permit application for deferment under subsection (9)(c)(i) of this section or prior to final inspection for deferment under subsection (9)(c)(ii) of this section, the applicant:

(A) Submits a signed and notarized deferred impact fee application and acknowledgement form for the development for which the property owner wishes to defer payment of the impact fees; and

(B) With regard to deferred payment under subsection (9)(c)(ii) of this section, records a lien for impact fees against the property in favor of the city in the total amount of all deferred impact fees for the development. The lien for impact fees shall:

1. Be in a form approved by the city attorney;

2. Include the legal description, tax account number and address of the property;

3. Be signed by all owners of the property, with all signatures as required for a deed, and recorded in the county in which the property is located;

4. Be binding on all successors in title after the recordation; and

5. Be junior and subordinate to one mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees.

(iv) In the event that the impact fees are not paid in accordance with subsection (9)(c)(ii) of this section, the city shall institute foreclosure proceedings under the process set forth in Chapter 61.12 RCW, except as revised herein. In addition to any unpaid impact fees, the city shall be entitled to interest on the unpaid impact fees at the rate provided for in RCW 19.52.020 and the reasonable attorney fees and costs incurred by the city in the foreclosure process. Notwithstanding the foregoing, prior to commencement of foreclosure, the city shall give not less than 30 days' written notice to the person or entity whose name appears on the assessment rolls of the county assessor as owner of the property via certified mail with return receipt requested and regular mail advising of its intent to commence foreclosure proceedings. If the impact fees are paid in full to the city within the 30-day notice period, no attorney fees, costs and interest will be owed.

(v) In the event that the deferred impact fees are not paid in accordance with this section, and in addition to foreclosure proceedings provided in subsection (9)(c)(iv) of this section, the city may initiate any other action(s) legally available to collect such impact fees.

(vi) Upon receipt of final payment of all deferred impact fees for the development, the department shall execute a separate lien release for the property in a form approved by the city attorney. The property owner, at their expense, will be responsible for recording each lien release.

(vii) Compliance with the requirements of the deferral option shall constitute compliance with the conditions pertaining to the timing of payment of the impact fees. (Ord. 2997 § 2, 2015; Ord. 2986 § 5, 2015; Ord. 2907 § 1, 2012; Ord. 2904 § 2, 2012; Ord. 2858 § 1, 2011; Ord. 2852 § 10 (Exh. A), 2011).

22D.030.071 Exemption of traffic impact fees for low-income housing.

(1) The chief administrative officer, or designee, may grant a partial exemption of not more than 50 percent of transportation impact fees, with no explicit requirement to pay the exempted portion of the fee from public funds for new low-income housing units in accordance with the conditions specified under RCW 82.02.060(2).

(2) To qualify for the exemption, the developer shall submit an application to the community development director for consideration by the city prior to application for building permit. Projects which have submitted a building permit prior to the ordinance codified in this section taking effect and which do not have an occupancy permit may apply after the effective date of the ordinance codified in this section, but prior to receiving an occupancy permit.

(3) The following factors will be considered in a decision to grant, partially grant, or deny an exemption:

(a) The public benefit of the specific project;

(b) The extent to which the applicant has sought other funding sources;

(c) The financial hardship to the project of paying the transportation impact fees;

(d) That the applicant is a nonprofit housing developer;

(e) The impacts of the project on public facilities and services; and

(f) The consistency of the project with adopted city plans and policies relating to low-income housing.

(4) The determination of the chief administrative officer shall be a final decision with respect to the

exemption of traffic impact fees.

(5) Any claim of exemption not made before the payment of the traffic impact fee is waived.

(6) An exemption granted under this subsection must be conditioned upon requiring the developer to record a covenant approved by the community development director that prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and require that, if the property is converted to a use other than for low-income housing as defined in the covenant, the property owner must pay the applicable transportation impact fees in effect at the time of any conversion. Covenants required by this subsection must be recorded with the Snohomish County auditor.

(7) For purposes of this section, “low-income housing” is defined as any housing with a monthly housing expense that is no greater than 30 percent of 50 percent of the median family income adjusted for family size, for Marysville, as reported by the United States Department of Housing and Urban Development. (Ord. 3038 §§ 1, 2 (Exh. A), 2016).

22D.030.080 Appeals.

Administrative interpretations and administrative approvals made pursuant to this chapter may be appealed to the hearing examiner pursuant to MMC 22G.010.530. (Ord. 2852 § 10 (Exh. A), 2011).

22D.030.090 Severability and duty.

(1) Severability. If any section, subsection, sentence, clause, phrase or word of this title should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this title.

(2) No Special Duty. It is the purpose of this chapter to provide for the health, welfare and safety of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this chapter. No provision or term used in this chapter is intended to impose any duty whatsoever upon the city or any of its officers, agents or employees for whom the implementation or enforcement of this chapter shall be discretionary and not mandatory. Nothing contained in this chapter is intended to be, nor shall be construed to create or form the basis for, any liability on the part of the city or its officers, agents and employees for any injury or damage resulting from the failure of any premises to abate a nuisance or to comply with the provisions of this chapter or be a reason or a consequence of any inspection, notice or order, in connection with the implementation or enforcement of this chapter, or by reason of any action of the city related in any manner to enforcement of this chapter by its officers, agents or employees.

(3) Emergency. In light of the rapid rate of development in the city of Marysville and Snohomish County and the need to provide adequate streets and transportation facilities to serve development, an emergency is hereby declared to exist due to the fiscal impacts of delay on the city and in order to preserve the public health, safety and welfare. (Ord. 2852 § 10 (Exh. A), 2011).

MUTUAL AGREEMENT REGARDING APPLICATION OF TRAFFIC IMPACT FEE REFUND

This Mutual Agreement Regarding Application of Potential Refund ("Agreement") is made this _____ day of _____, 2018 between the City of Marysville, a Washington municipal corporation ("City") and Fernandez Investments LLC ("Applicant").

WHEREAS, Applicant, pursuant to MMC 22D.030.070(3) on February 9, 2015 paid to the City traffic impact fees of $86,955.00, and on May 13, 2015 paid to the City traffic impacts fees of $86,955, totaling $173,910;

WHEREAS, Applicant, pursuant to MMC 22D.030.070(5)(b) made application for a traffic impact fee exemption;

WHEREAS, Applicant is a "new commercial retail business" in the City as defined by MMC 22D.030.070(5)(c) and said new commercial business is located in the following prescribed land use zone: General Commercial (GC);

WHEREAS, City holds the traffic impact fees paid by the Applicant on deposit;

WHEREAS, City issued to applicant a certificate of occupancy on April 2, 2015;

WHEREAS, the three year period for determination of exemption expired, April 2, 2018;

WHEREAS, Applicant has generated to the City average annual City of Marysville portion sales and use tax revenue of at least $200,000 based upon the three-year period commencing from the date of the certificate of occupancy;

WHEREAS, Applicant is entitled to a refund of 50% of the traffic impact fee with accrued interest pursuant to MMC 22D.030.070(5)(d)(2) (the "Refund);

WHEREAS, Applicant submitted an application for construction of a auto dealership, known as Marysville Auto Center (the "Dealership");

WHEREAS, the Dealership is described as follows:

LEGAL DESCRIPTION:
Section 29 Township 31 Range 05 Quarter SE - LOT 5 CITY OF MAR BSP NO PA07051 REC UND AFN 200801075088 BEING A PTN NE1/4 SE1/4 SD SEC 29 LY ELY OF SR 5 (AKA PSH NO 1)

ASSESSORS PARCEL NUMBER:
31052900402200

LEGAL DESCRIPTION:
Section 29 Township 31 Range 05 Quarter SE - LOT 4 CITY OF MAR BSP NO PA07051 REC UND AFN 200801075088 BEING A PTN NE1/4 SE1/4 SD SEC 29 LY ELY OF SR 5 (AKA PSH NO 1)

ASSESSORS PARCEL NUMBER:
31052900402100

ADDRESS:
16232 Smokey Point Boulevard
Marysville, WA 98271

WHEREAS, the Applicant's Property is subject to payment of traffic impact fees in the amount of $67,488.00;

WHEREAS, City and Applicant desire to enter into this Agreement for the Refund to be applied to the traffic impact fees for the Dealership, in accordance with 22D.030.070(d);

NOW THEREFORE, it is agreed between City and Applicant as follows:

1. Truth of Recitals. City and Applicant agree that the recitals above are true and accurate.

2. Application of refund; excess. The City will apply $67,488.00 of the Refund to the Dealership traffic impact fees, which will remain on deposit with the City. The remainder of the Refund, along with all accrued interest, will be paid to the Applicant on or before July 31, 2018.

3. Right to interplead; dispute. In the event a dispute shall develop between City and Applicant concerning this Agreement or application of any Refund under this Agreement, the parties agree that City may interplead the Refund into the registry of the Snohomish County Superior Court and such dispute shall be resolved in said court.

4. Interpretation. This Agreement was drafted by attorneys for the City. Notwithstanding City having caused the drafting of this Agreement, the provisions of this Agreement shall not be interpreted against the City but shall be given a fair and equal interpretation as if drafted by both parties.

5. Complete agreement; integration. This Agreement is intended to be an integrated, complete and final agreement, and there are no other or further agreements between the parties except as set our herein concerning the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

CITY OF MARYSVILLE

_____
Jon Nehring, Mayor

ATTEST

_____
City Clerk

APPROVED AS TO FORM:

_____
Jon Walker, City Attorney

FERNANDEZ INVESTMENTS LLC

_____
Victor Fernandez