

King County
Department Of Natural Resources And Parks
Water And Land Resources Division
Open Space Acquisitions Unit
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Interlocal Cooperation Agreement
Between
King County and the City of Issaquah
Implementing a Transfer of Development Rights Program

November 6, 2007

Department: DNRP/WLRD Open Space Acquisitions Unit

**Parties City of Issaquah and
King County**

Project: Transfer of Development Rights Program

COPY

AN INTERLOCAL AGREEMENT IMPLEMENTING
A TRANSFER OF DEVELOPMENT RIGHTS PROGRAM
BETWEEN
UNINCORPORATED KING COUNTY AND THE CITY OF ISSAQUAH

This Agreement is hereby entered into by King County, a home rule charter county of the State of Washington, herein after referred as the "County," and the City of Issaquah, a municipal corporation of the State of Washington, herein referred to as the "City."

RECITALS

WHEREAS, the Washington State Growth Management Act (GMA), R.C.W. 36.70A, directs development to urban areas, discourages inappropriate conversion of undeveloped rural land into sprawling, low-density development, and encourages the conservation of productive forest lands and productive agricultural lands; and

WHEREAS, the GMA requires counties to adopt countywide planning policies in cooperation with cities within the County; and

WHEREAS, by Interlocal Agreement, the County, Suburban Cities and the City adopted and ratified the Countywide Planning Policies for King County; and

WHEREAS, the Countywide Planning Policies direct jurisdictions in the County to implement programs and regulations to protect and maintain the rural character of rural, farm and forest lands, and to direct growth to cities and urban centers; and

WHEREAS, the County has developed a Transfer of Development Rights (TDR) program which, subject to adoption of an interlocal agreement, authorizes cities to receive development rights transferred from unincorporated rural and resource lands; and

WHEREAS, the rural and resource lands in the County are recognized as containing important countywide public benefits such as forestry, open space, wildlife habitat, agricultural resources and salmon habitat; and

WHEREAS, consistent with the provisions of the Endangered Species Act, the County and the City share a strong interest in the preservation of salmon habitat; and

WHEREAS, the City is in the process of establishing a Transfer of Development Rights Program; and

WHEREAS, the City and the County share an interest in creating an effective, cooperative development rights transfer system to achieve the goals of the GMA, the Countywide Planning Policies, City and King County Comprehensive Plans; and

WHEREAS, the County and the City are authorized, pursuant to R.C.W. 39.34

and Article 11 of the Washington State Constitution, to enter into an interlocal governmental cooperation agreement to accomplish these shared goals; and

WHEREAS, the County, pursuant to County Ordinance 2006-0571, has authorized the Executive to execute an interlocal agreement with the City of Issaquah to transfer rural development rights into the City and provide Conservation Futures funding for the acquisition of open space inside the City; and

WHEREAS, the City, pursuant to City Ordinance 2434, has authorized the transfer of development rights from privately owned rural and resource lands in the Issaquah Creek Basin in King County to receiving sites in the City of Issaquah.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing circumstances, the County and the City herein agree:

I. PURPOSE

The County and the City agree to implement a program (hereafter the "Program") for the transfer of development rights from privately owned unincorporated King County rural and resource lands in the Issaquah Creek Basin ("Rural Development Rights") into the City according to the provisions described below. The County Rural Development Rights accepted by the City of Issaquah shall not exceed 75 TDR units.

II. RESPONSIBILITIES AND POWERS OF THE CITY OF ISSAQUAH

A. The City of Issaquah has developed a Transfer of Development Rights Program to provide incentives to protect selected Sending Site properties inside and outside the City while authorizing additional residential density, commercial square footage and other uses at selected Receiving Sites inside the City.

B. The City enacted appropriate TDR legislation, attached herein as City Code 18.10.240 in Exhibit A, as a precondition for receiving Rural Development Rights from the County per King County Code 21A.37.140A.

C. The City shall continue to permit the use of Rural Development Rights from King County at Receiving Sites in the City during the term of this Agreement. Rural Development Rights shall be from priority Sending Sites within the Issaquah Creek Basin in conformity with King County Code 21A.37.020 and City Code 18.10.240, as designated in the King County Comprehensive Plan or a functional plan, unless other Sending Sites are mutually agreed to by the City and County.

D. The City, per King County Code 21A.37.040F and 21A.37.140C, shall work with the County to mutually agree upon the conversion ratio for Rural Development Rights that are transferred into the City. The City may modify the terms and conditions upon which Rural Development Rights may be used at the Receiving Sites in the City after consulting with the County.

E. The City shall notify the County when it has approved the use of Rural Development Rights that were purchased from the King County TDR Bank or private parties in a specific project and shall execute a transfer of development rights extinguishment document in conformance with the King County Code 21A.37.140B.

III. RESPONSIBILITIES AND POWERS OF KING COUNTY

- A. The County adopted polices, regulations and administrative procedures under K.C.C. 21A.37 to implement the Program, which promotes and facilitates the purchase and sale of Rural Development Rights. These policies:
- a.) establish criteria and procedures for the certification of sending sites;
 - b.) facilitate and promote certification of sites;
 - c.) establish procedures to facilitate the sale of Rural Development Rights;
 - d.) seek priority sites within the Issaquah Creek Basin for future purchase of development rights by the County's Transfer of Development Rights Bank;
 - e.) establish procedures to require, maintain and enforce deed restrictions on sending sites from which development rights are bought, in order to prohibit those sites from being developed in violation of the deed restrictions and shall provide a copy of the Deed Restrictions/ Conservation Easement to the City before final approval.
- B. The County shall work with the City, per City Code 18.10.240 and King County Code 21A.37, to mutually agree upon the conversion ratio for Rural Development Rights that are transferred into the City.
- C. Funding.
1. The County shall provide \$200,000 for the acquisition of open space land selected by the City of Issaquah in a manner that is consistent with the provisions governing allocation of conservation future tax levy funds in K.C.C. Ch. 26.12, and which would require the City to enter into an interlocal agreement in substantially the form attached hereto as Exhibit B.
 2. Contingent on approval from the Metropolitan King County Council, the County through the King County Executive, and the City through the Mayor of Issaquah, will negotiate in good faith to determine the amount, if any, of future amenity funds to be provided by the County to the City. In negotiating this issue, the County will seek to provide to the City additional amenity funds in amounts not to exceed the dollar amounts of rural development rights purchased from the King County Transfer of Development Rights Bank or private parties used inside the City.
 3. Any amenity funding will be consistent with County revenue statutory restrictions and shall be based on a written scope of work, budget, and schedule provided by the City.
 4. Any project or activity for which amenity funding is provided by the

County to the City, or the portion thereof funded by the County, must be completed within five years of the receipt of the funds by the City. If any such project or activity is not completed within five years, then any funds provided for such project or activity by the County, not yet expended on costs of such project or activity, must be returned to the County with interest earned (at market rates mutually agreeable to both parties) by the City and not yet expended for such costs.

IV. EVALUATION AND MONITORING

- A. The records and documents with respect to all matters covered by this Agreement shall be subject to inspection, review, or audit by the City or County as requested by each jurisdiction during the applicable records retention period specified by or pursuant to law.
- B. The City and County shall periodically publish a joint report evaluating the progress of the Program. The evaluation shall include at a minimum an analysis of the number of Sending Sites certified in the Issaquah Creek Basin as identified in Exhibit A, the number of Receiving Sites in the City that used Rural Development Rights, and the number and value of Rural Development Rights bought and sold by the TDR Bank or private parties for use in the Program.

V. DURATION

- A. Duration. This Agreement shall become effective on the date it is signed by all parties and shall continue until July 1, 2014.
- B. Extension. Pursuant to a mutual written agreement between the County Executive and City Mayor, this Agreement may be extended for a maximum of five (5) years from the effective date of the extension. To extend the Agreement, the City or the County shall make a written request to the other not less than sixty (60) days prior to the end of this Agreement. The request shall specify the proposed term of the extension. The parties must agree to the extension in writing by the termination date or the agreement will lapse.

VI. INDEMNIFICATION

- A. The County shall indemnify and hold harmless the City and its officers, agents and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the County, its officers, agents, and employees, or any of them, in performing obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the

City, the County shall defend the same at its sole cost and expense, provided that the City retains the right to participate in said suit if any principal or governmental or public law is involved, and if final judgment be rendered against the City and its officers, agents, and employees, or any of them, or jointly against the City and County and their respective officers, agents, and employees, or any of them, the County shall satisfy the same.

- B. The City shall indemnify and hold harmless the County and its officers, agents and employees or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the City, its officers, agents, and employees, or any of them, in performing obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the County, the City shall defend the same at its sole cost and expense, provided that the County retains the right to participate in said suit if any principal of governmental or public law is involved; and if final judgment be rendered against the County and its officers, agents, employees, or any of them, or jointly against the City and County and their respective officers, agents, and employees or any of them, the City shall satisfy the same.
- C. The City and the County acknowledge and agree that if such claims, actions, suits, liability, loss, costs, expenses and damages are caused by or result from the concurrent negligence of the City, its agents, employees, and/or officers and the County, its agents, employees, and/or officers, this section shall be valid and enforceable only to the extent of the negligence of each party, its agents, employees and/or officers.

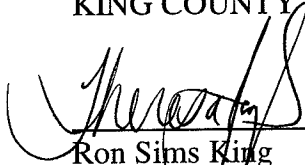
VII. GENERAL TERMS

- A. This Agreement shall be administered for the City by the Mayor or his /her designee and for the County by the County Executive Officer, or his/her designee.
- B. If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected.
- C. Waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent breach, and shall not be construed to be a modification of this Agreement.
- D. This Agreement is made and entered into for the sole protection and benefit of the parties hereto. No other person or entity shall have any right of action or interest in this Agreement based upon any provision set forth herein.

E. This Agreement is the complete expression of the terms hereof and any oral representation or understanding not incorporated herein is excluded. Any modifications to this Agreement shall be in writing and signed by both parties.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the spaces put forth below:

KING COUNTY



Ron Sims King
King County Executive

Date: 10/26/07
Acting under the authority of
Ordinance 14850


CITY OF ISSAQUAH



Ava Frisinger
Mayor

Date: 10/4/07

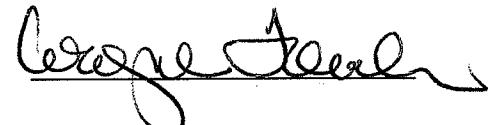
Approved as to form:



~~Norman Leng~~ *Timothy Barnes*
King County Prosecuting Attorney

Senior Deputy

Approved as to form:



Issaquah City Attorney

Exhibit A

City of Issaquah Transfer of Development Rights Program

18.10.2005 Purpose and intent of the transfer of development rights program.

The intent of the TDR program is to:

A. Decrease development pressure on land adjoining critical areas by providing the owners of private property with the opportunity for a reasonable economic return by transferring development rights from parcels with these critical areas to land more suited for urban development. Key focus areas are salmon habitat, riparian corridors, and floodways throughout the Tibbetts Creek and Issaquah Creek Basins.

B. Increase public open space by providing the opportunity for development rights to be transferred from private land adjacent to public open space;

C. Increase density in specific parts of the City that are best suited to accommodate urban densities and to accomplish City goals for increasing the opportunities for transit service, open space and an increased efficiency of urban service provision.

D. Promote design and development consistent with the City's vision and the Comprehensive Plan's Olde Town Design Standards in areas outside of the Olde Town area.

E. Promote equity by providing the opportunity to transfer the same number of development rights consistent with the development potential of the sending sites' existing development regulations. (Ord. 2434 § 1, 2005).

18.10.2010 State enabling legislation.

This chapter is adopted pursuant to RCW 36.70A.090, Comprehensive plans—Innovative techniques, which states, “A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights.” (Ord. 2434 § 1, 2005).

18.10.2020 Definitions.*

Following are specific definitions for certain words, terms and phrases used in this section of the Issaquah Land Use Code. Where any of these definitions conflict with definitions used in other titles of the Municipal Code, the definitions herein shall prevail when used in the context of this chapter. Other terms used in this section may be defined in Chapter 18.02 IMC.

Creek side restoration project: A project approved by the City for the restoration of creek side areas for the benefit of anadromous fish habitat.

Designated property: Those parcels shown as TDR sending or receiving sites on the TDR Sending and Receiving Sites Map. The sending sites are required to become qualified by the City before TDRs are available to receiving sites. (See IMC 18.10.2040(B), TDR Certification.)

Development rights: The allowable dwelling units, and the associated number of p.m. peak hour trips and either impervious surface, or building height that may be transferred from a TDR sending site to a TDR receiving site.

Easement, conservation: A voluntary, legally recorded restriction, in the form of a deed, on the use or the property, in order to protect resources such as agricultural lands, historic structures, open space and wildlife habitat. The easement may include all or part of a parcel. In perpetuity, no new development shall take place within the areas covered by the easement. The property itself may remain in private ownership.

Extinguishment document: When a development right is purchased and then used, the right to build a dwelling unit on the sending site is "extinguished." It is used up and cannot be used again in any other location. The extinguishment document records the sale and use of the development right on both the sending site and the receiving site and states how the development rights are applied.

Letter of intent, TDR certification: A signed letter provided by the City documenting availability of development rights for sale from a sending site. For those sending sites outside the City limits, this letter will be provided by King County.

Public open space: Property owned by the City of Issaquah, King County or State Departments of Parks and Recreation and Natural Resources that is set aside to serve the purposes of protecting and conserving critical areas and natural systems.

Redevelopment sites: Receiving sites that are identified in the 2001 Vacant and Redevelopable Land Inventory as an underdeveloped commercial property and identified on the TDR Sending and Receiving Sites Map.

Stewardship plan: is a comprehensive plan for the long-term protection of property under a conservation easement developed by the property owner and approved, monitored and enforced by the City of Issaquah. The plan must include:

A course of action that prevents degradation of the values, structure and functions of the natural resources and open space;

An inventory of the existing conditions as well as all critical areas and their buffers;

A site map showing any existing or proposed development or other activities, protected natural areas and proposed enhancements;

A timeline for implementing any enhancements and follow up monitoring and maintenance; and

Bonds for maintenance, if necessary as required by IMC 18.10.810, Bonds for restoration and mitigation activities.

TDR base density: The developable units on a residentially zoned property calculated per IMC 18.10.450, Density credits. For commercial and retail zoned property, TDR base density means the developable square footage calculated per IMC 18.10.450, Density credits.

TDR certificate: A recorded document, issued by the City or King County, showing the number of development rights available from a sending site to be used at a TDR receiving site.

TDR, certified: That a sending site owner has obtained a certificate from the City verifying that the transfer of development rights process is completed on the property, and a conservation easement has been recorded or the property has been dedicated as public open space in perpetuity.

TDR development right conversion ratio: Each development right may be converted into three (3) of the four (4) uses of a TDR as defined in IMC 18.10.2040(A)(3), Use of Development Rights. A TDR unit cannot be divided.

TDR sending site: Privately owned property in the City limits that has been designated as a sending site on the TDR Sending and Receiving Sites Map. Sending sites also include property in the King County Rural or Resource Zones of the Issaquah Creek Basin containing environmentally critical areas as defined in the King County Interlocal Agreement.

TDR sending site, first priority: Those sending sites that are designated on the TDR Sending and Receiving Sites Map based on IMC 18.10.2030(B), Designation Criteria – Sending Sites.

TDR sending site, qualified: That a TDR sending site owner has obtained a TDR certification letter of intent from the City that identifies the number of development rights available for transfer from the property.

TDR sending site, second priority: Those sending sites that are designated on TDR Sending and Receiving Sites Map based on IMC 18.10.2030(B), Designation Criteria – Sending Sites. Second priority sending sites are not eligible to be qualified until fifty (50) percent of the first priority sending sites are certified.

TDR receiving site: Privately owned property in the City limits where existing urban services and infrastructure can accommodate additional development. TDR receiving sites are designated on the TDR Sending and Receiving Sites Map.

Transfer of development rights (TDRs): A program that decreases development pressure on land adjoining critical areas by providing the owners of private property with a mechanism to transfer development rights from parcels with these critical areas to land more suited for urban development. Landowners receive financial compensation without developing their land and the public receives permanent preservation of the land.

Transit-oriented development: See definition in IMC 18.02.220, Definitions – T. (Ord. 2434 § 1, 2005).

*Code reviser's note: The TDR Sending and Receiving Sites Map is attached to Ord. 2434 and available for review in the City Clerk's office.

18.10.2030 Designation of sending and receiving sites.*

Sending sites and receiving sites are established, based on their ability to meet the purpose and intent and designation criteria of the TDR program.

A. TDR Sending and Receiving Sites Map: Tax parcels within TDR sending and receiving sites are designated by the City on the TDR Sending and Receiving Sites Map.

B. Designation Criteria – Sending Sites:

1. Inside City Limits: The site is privately owned and meets one (1) or more of the following criteria;
 - a. The site includes at least thirty (30) percent critical areas and/or required critical area buffers as defined by this chapter; and/or
 - b. The site is contiguous with existing public open space; or
 - c. Retention of all or part of the site in permanent open space will achieve one (1) or more of the goals and policies adopted in the Comprehensive Plan; or
 - d. The site is located adjacent to a creek side restoration site; or

- e. The site requires a reasonable use variance as required in IMC 18.10.390, Definitions (R), or a critical area variance as defined in IMC 18.10.430, Variances, in order to be developed; or
 - f. The site has limited access for ingress, egress or infrastructure accessibility.
2. Outside City Limits: Through an interlocal agreement with King County, the City will set criteria for privately owned TDR sending sites outside the City limits and within the Issaquah Creek Basin. These sites will be in the King County Rural or Resource Zone.
 3. First Priority Sites:
 - a. First priority sites are identified by the following means:
 - i. Sites designated as first priority on the TDR Sending and Receiving Sites Map.
 - ii. Sites that require a reasonable use variance or a critical area variance (IMC 18.10.430, Variances).
 - iii. Sites that are outside the City limits and associated with the King County Interlocal Agreement.
 - b. Only first priority sending sites will be eligible to participate in the TDR program unless a request for changed priority application is approved as defined in subsection (D)(2) of this section, Request for Changed Priority.
 - c. Second priority sites will be eligible to participate in the TDR program when fifty (50) percent of the first priority parcels are certified.
 4. Future Use of a Designated Sending Site: The development or use of a TDR sending site may affect the designation of the property as a TDR sending site.
 5. Designation as a sending site is not intended to supplant a property owner's ability to exercise a reasonable use variance or critical area variance (IMC 18.10.430, Variances) for development of their property.

C. Designation Criteria – Receiving Sites: Parcels with more than fifty (50) percent critical area are not eligible to be receiving sites, except for those sites that are over fifty (50) percent in the Critical Aquifer Recharge Area. Properties accessing 229th Avenue SE cannot be receiving sites because of requirements established for the 229th traffic signal. Receiving sites are privately owned and meet one (1) or more of the following criteria:

1. The parcel is within three quarters (0.75) of a mile from the Issaquah Transit Center, south of I-90 and is zoned: Multifamily-High, Mixed Use Residential, Retail, Intensive Commercial or Professional Office; or
2. The parcel is within one quarter (0.25) mile of a transit stop and zoned: Retail, Intensive Commercial or Professional Office, and the site's primary access and street frontage are located on "major streets" as defined as: Gilman Boulevard east of SR 900, Front Street, Newport Way, Sunset Way, SR 900, NW Sammamish Road, NW Maple Street, East Lake Sammamish Parkway (ELSP), SE 56th Street to one thousand two hundred (1,200) feet east of ELSP, Issaquah-Fall City Road, or Issaquah-Pine Lake Road SE; or

3. The parcel is a CBD or Multifamily zoned property within the Olde Town Design Standards area; or
4. The parcel is within the existing development area or established expansion areas of an Urban Village; or
5. The parcel is a redevelopment site as defined in IMC 18.10.2020, Definitions (R).

D. TDR Map Amendments:

1. Adding a Sending or Receiving Site: A proposal to add a receiving or sending site to the TDR Sending and Receiving Sites Map shall be reviewed as a Land Use Code Amendment, Level 6 Review. Review and approval shall be made based on the proposal's ability to meet the designation criteria established in subsections B and C of this section.
2. Request for Changed Priority: Designated sending sites that are second priority may request consideration to be first priority through a Land Use Code Amendment, Level 6 Review. Review and approval shall be made based on the proposal's ability to show why it should be designated first priority. (Ord. 2434 § 1, 2005).

*Code reviser's note: The TDR Sending and Receiving Sites Map is attached to Ord. 2434 and available for review in the City Clerk's office.

18.10.2040 Sending TDRs: Certification, application and procedures.

A. Qualifying a Sending Site for the Transfer of Development Rights:

1. Eligibility: In order to sell or transfer development rights, the property owner of a designated first priority or otherwise eligible sending site(s) must submit:
 - a. A complete application and appropriate application fee to the City requesting certification of the property as a TDR sending site;
 - b. Site survey:
 - i. For parcels intending to retain more than one (1) unit of the development rights of the parcel: A site survey showing the property and delineating any critical areas and their buffers and the potential developable area.
 - ii. For parcels intending to transfer the density of the entire parcel (except for the retention of one (1) unit): No critical areas surveys are required.
 - c. A description of the intended use of the property after the development rights are sold and/or how the property will remain in permanent open space.
 - d. A development agreement is required for those sending sites over ten (10) acres intending to retain more than one (1) of the development rights of the parcel.
 - e. Outside City Limits: See Issaquah/King County Interlocal Agreement for documentation on application requirements for parcels outside City limits in Issaquah Creek Basin.

2. Calculation of TDRs:

- a. Inside City Limits: The Planning Director or his/her designee shall review the application and calculate the allowable number of development rights for the sending site.
 - i. For residentially zoned sending sites, the TDR base density shall be calculated as defined in IMC 18.10.450, Density credits. Developable units on a subject property equal the property's TDR base density.
 - ii. For commercially zoned sending sites, the TDR base density shall be calculated as defined in IMC 18.10.450, Density credits, based on the maximum buildable square footage on the site divided by two thousand (2,000) square feet.
 - iii. For parcels zoned SF-E (1.24 du/acre), the TDR base density shall be calculated beginning with four (4) dwelling units per acre and then calculated as defined in IMC 18.10.450, Density credits.
 - b. Outside City Limits: The maximum transferable number of development rights by a sending site outside of the City limits shall be established through a development agreement with the property owner, King County and the Issaquah City Council as required by the Issaquah/King County Interlocal Agreement.
3. Use of Development Rights: Each development right includes three (3) distinct uses that can be combined on a receiving site; however, the three (3) individual uses of each TDR shall not be divided. One (1) TDR equals:
 - a. One (1) residential dwelling unit; and
 - b. One (1) p.m. peak hour trip; and
 - c. Impervious Surface:
 - i. Two thousand (2,000) square feet of impervious surface outside of the Critical Aquifer Recharge Area (CARA), or
 - ii. One thousand (1,000) square feet inside the CARA; or
 - d. Additional Building Height/Floor Area: Note: (1) additional height is not allowed in the Multifamily-High (MF-H) zoning district; and (2) Maximum height for structures in Shoreline Jurisdiction is thirty-five (35) feet (Issaquah Shoreline Master Program):
 - i. Two thousand (2,000) square feet of gross floor area above the base building height or maximum building height if the proposal complies with all of the development standards in IMC 18.07.355, Building height adjustments, or
 - ii. One thousand (1,000) square feet of gross floor area above the base building height or maximum building height established in IMC 18.07.360, District standards table, if the proposal deviates from IMC 18.07.355(A)(1)(b), (B)(1)(b) and (C)(1)(b), Building height adjustments.
 4. TDR Certificate Letter of Intent: The Planning Director or his/her designee shall prepare and issue a TDR certificate letter of intent for the sending site which documents the available development rights on said sending site. When any of these development rights are certified, the letter of intent shall also be reissued to reflect the new amount of development rights.

5. TDR Certificate Letter of Intent Revision Request: The applicant may request, in writing, that the Director revise the TDR certificate within ninety (90) days of the issuance of the TDR certification letter of intent when:
 - a. The development rights have not been sold; and
 - b. The applicant demonstrates that the TDR rights were improperly calculated; or
 - c. The applicant provides additional studies, data or other information demonstrating that an adjustment of the TDR rights would be appropriate.
- B. TDR Certification:
1. Certifying TDRs:
 - a. Inside City Limits: The Planning Director or his/her designee shall review an application for a TDR certificate for the sending site inside the City limits at the request of a qualified sending site property owner. Following review and approval of the sending site certification application, a TDR certificate letter of intent shall be issued defining the TDR certificate content as required in subsection (B)(2) of this section, TDR Certificate Content. The sending site property owner may then market the TDR sending site development rights to potential purchasers. After the sale of a TDR and the designation of the specific area(s) of the property as permanent open space as required in subsection (B)(3) of this section, Preservation of Open Space Resulting from TDR Conversion, is completed, the TDR certificate may be issued.
 - b. Outside City Limits: TDR certification on sending sites outside the City limits within King County shall be as required by Chapter 21A.37 KCC.
 - c. Prior to the release of building permits, the receiving site applicant shall deliver the TDR certificate(s) to the City and an extinguishment document shall be recorded on the sending site(s) and receiving site after approval of the receiving site project.
 2. TDR Certificate Content: A TDR certificate is a recorded document, showing the number of development rights available from a qualified sending site to be used by a TDR receiving site and shall delineate the number of development rights including:
 - a. The number of residential dwelling units; and
 - b. The number of p.m. peak hour trips; and
 - c. The amount of impervious surface transferable to a TDR receiving site or the additional square footage of gross floor area (above the base building height or maximum building height established in IMC 18.07.360, District standards table, for the underlying zoning district of the TDR receiving site) transferable to a TDR receiving site; and
 - d. Proof of preservation of open space resulting from TDR conversion shall be as required in subsection (B)(3) of this section, Preservation of Open Space Resulting from TDR Conversion.
 3. Preservation of Open Space Resulting from TDR Conversion: As part of the development rights transfer and prior to the issuance of the TDR certificate, the sending site property owner is required to document that the site, or

portion of the site, is no longer developable and shall be preserved in permanent open space in one (1) of the following ways, as determined by the City case by case:

- a. The sending site property owner shall record a conservation easement in perpetuity over the parcel and deed the ownership of the property to the City to be preserved in permanent public open space. Maintenance for the benefit and protection of the natural resources, including wildlife, scenic corridors and water quality shall be the responsibility of the City as defined in the conservation easement. Property deeded to the City shall include a restriction on installation of new utilities except:
 - i. To allow any third party with right under an ingress, egress, utility, or similar easement that was established or recorded prior to the effective date of said easement to exercise such rights;
 - ii. To install, use and maintain linear or underground utilities; provided, that such installation shall be along the alignment that results in the least disturbance to vegetation among the reasonable alternatives for such alignment; and further provided, that any area disturbed by such activity is promptly restored to the original grade and revegetated.
- b. The sending site property owner shall record a conservation easement in perpetuity over the parcel as a condition of selling the TDR. The easement shall include the preparation and implementation of a stewardship plan to ensure the property is maintained for the benefit and protection of the natural resources, including wildlife, scenic corridors, and water quality. All conservation easements shall allow City staff access to the property to ensure compliance with the conservation easement.

4. Reissuing TDR Certificates: The Planning Director or his/her designee shall administer the TDR Program by reissuing or retiring certificates when some or all of a parcel's development rights have been transferred. A TDR certificate must be reissued and recorded after the sale of TDRs to the receiving site owner and the recording of a conservation easement or dedication of the property as public open space. The reissued TDR certificate shall clearly state the remaining TDRs available for that parcel. If no TDRs are available, that information shall also be recorded.

C. Determining the Number of Units Remaining on a Sending Site:

1. Transferring all of the TDRs: All or a portion of the TDRs certified by the Planning Director may be sold. If all of the TDRs are transferred, no further development shall occur on the sending site and the entire parcel shall remain in permanent open space in perpetuity, forestry or agriculture in accordance with the provisions of subsection (B)(3) of this section, Preservation of Open Space, resulting from TDR conversion.
2. Transferring TDRs Over Time: Certified TDRs from one (1) site may be sold over time or to more than one (1) receiving site until all development rights are sold or the property owner chooses to develop the remainder of the property.

3. Calculating Any Remaining Density on the Sending Site: If only a portion of the TDRs are sold and transferred, the remainder of the property may be developed as follows:
 - a. A portion of the site, equal to the percentage of TDRs that were sold, must be transferred to or protected under a conservation easement as required by subsection (B)(3) of this section, Preservation of Open Space, resulting from TDR conversion, before any Building Permits can be issued for the receiving site or any development applications may be submitted for the remainder property of the sending site.
 - b. The conservation easement area and the remainder property must both include the same percentage of critical area as the original property.
 - c. The number of dwelling units or, in the case of commercially zoned land, the building square footage permitted on the remainder property shall be determined in accordance with the conservation easement and provisions of IMC 18.10.450, Density credits, based on the percentage of critical area on the site. (Ord. 2434 § 1, 2005).

18.10.2050 Receiving TDRs: Standards, applications and procedures.

A. Standards for Transferring Development Rights to a Receiving Site: Transferred development rights can be accommodated on a receiving site based on the following design and development criteria:

1. Applicability: Receiving sites may have the allowable development permitted by the underlying zoning district and related standards. Purchased TDRs may be used to exceed the allowable development and be used for new development or modification to existing development. Receiving sites shall be developed in accordance with this chapter. All development and design standards required by the underlying zoning district shall be met, unless the standards are adjusted through IMC 18.07.250, Administrative adjustment of standards.
2. Residential Density and Commercial Square Footage Limits:
 - a. Additional Density and/or Commercial Square Footage: Additional residential density and/or commercial square footage may be proposed through a development agreement approved by the City Council through a Level 5 Review based on the following residential density limits in the following table:

| Table 18.10.2050(A)(1): Residential Density and Commercial Square Footage Limits | |
|---|--|
| Receiving Site Zone (underlying zoning) | Density Limits (Increase of 25%) |
| MF-M & MUR (14.52 dwelling units per acre) | 18 dwelling units per acre |
| MF-H (29 dwelling units per acre) | 36 dwelling units per acre |
| Other Zones | Increase of 25% of units or 25% increase in building square footage for commercially zoned receiving sites |

- b. Building Height and/or Gross Floor Area: The maximum building height for all zoning districts is established in IMC 18.07.360, District standards table. Through transfer of development rights, a receiving site may propose additional square footage of gross floor area above the base building height or maximum building height as established in the following table:

**Table 18.10.2050(A)(2)
Process and Conditions for Maximum Building Heights for Receiving Sites¹**

| Receiving Site Zoning District | Maximum building height allowed in underlying zoning district in IMC <u>18.07.360</u>, District standards table | Process and Conditions for Maximum Building Height with Purchase of TDRs | |
|--|--|--|---|
| | | Administrative Adjustment of Standards² | Development Agreement processed through a Level 5 Review |
| | | Conditions: Comply with all of the development standards in IMC <u>18.07.355</u>, Building height adjustments, including the height above the maximum building height | Conditions: a) Comply with IMC <u>18.07.060(A)</u>, Purpose; and b) Allow deviation from IMC <u>18.07.355</u> (A)(1)(b), (B)(1)(b) and (C)(1)(b), Building height adjustment standards |
| MF-M Multifamily – Medium | 50 ft | 65 ft | 65 ft |
| MF-H Multifamily – High | 65 ft | 65 ft | 65 ft ³ |
| MUR Mixed Use Residential | 50 ft | 65 ft | 65 ft |
| PO Professional Office | 65 ft | 80 ft | 80 ft |
| R Retail | 65 ft | 80 ft | 80 ft |
| IC Intensive Commercial | 65 ft | 80 ft | 80 ft |
| CBD Cultural and Business District | 65 ft | 80 ft | 80 ft |

¹ Maximum height for structures in Shoreline Jurisdictions is thirty-five (35) feet (Issaquah Shoreline Master Program).

- ² The complete receiving site proposal is processed as established in IMC 18.06.130, Table of permitted land uses, based on the review process for the proposed land use in the underlying zoning district.
- ³ Receiving site parcels zoned MF-H (along Sunset Way) are not permitted additional height above the maximum building height due to their small lot size.

3. Impervious Surface Limits: Impervious surface limits on the receiving site may be increased as defined in the following table:

| Table 18.10.2050(A)(3) Process and Conditions for Impervious Surface¹ Ratio Limits in Receiving Sites | | | |
|---|--|--|--|
| | | Process and Conditions for Impervious Surface Ratio Limit with purchase of TDRs | |
| Receiving Site Zoning District | Impervious Surface Ratio allowed in underlying zoning district IMC <u>18.07.360</u>, District standards table | Administrative Adjustment of Standards ² | Development Agreement reviewed and approved through a Level 5 Review |
| | | Conditions: meet the conditions established in IMC <u>18.07.350</u>, Other standards not identified | Conditions: Commercial and Mixed Use (commercial and residential) projects are required to meet Olde Town Design Standards for CBD ³ |
| MF-M Multifamily – Medium | 50% | 65% | 75% |
| MF-H Multifamily – High | 50% | 65% | 75% |
| MUR Mixed Use Residential | 50% | 65% | 85% |
| PO Professional Office | 65% | 80% | 90% |
| R Retail | 65% | 80% | 90% |
| IC Intensive Commercial | 65% | 80% | 90% |
| CBD Cultural and Business District ⁴ | 85% | 95% ⁴ | N/A |

¹ The Critical Aquifer Recharge Area is identified on maps in the Permit Center and includes Wellhead Protection Areas based on one (1), five (5) and ten (10) year capture zones.

² The complete receiving site proposal is processed as established in IMC 18.06.130, Table of Permitted Land Uses, based on the review process for the proposed land use in the underlying zoning district.

³ Multifamily projects are required to meet Olde Town Design Standards for MF-M and MF-H Districts.

⁴ All projects in the CBD are required to meet the Olde Town Design Standards.

4. Transportation Concurrency: The total transportation concurrency trips shall be calculated by:

| Calculation | Reference |
|---|---|
| Step 1: Total p.m. peak trips generated by the proposed development at receiving site | IMC <u>18.15.260</u> , Concurrency review |
| Step 2: (Credit) Number of p.m. peak trips allocated to existing use | IMC <u>18.15.260</u> , Concurrency review |
| Step 3: (Credit) Number of p.m. peak trips purchased through TDRs | IMC <u>18.15.260</u> , Concurrency review |
| Step 4: (Equals) Net number of new p.m. peak trips subject to transportation concurrency requirements | IMC <u>18.15.260</u> , Concurrency review |

- a. TDR trips can be used on a trip by trip basis to reduce p.m. peak trips generated by proposed projects. Purchased TDRs may be used to evaluate transportation concurrency, as established in IMC 18.15.260, Concurrency review.
- b. Purchasing TDRs for p.m. peak trips to meet transportation concurrency does not remove the responsibility of the property owner to make required traffic improvements in the vicinity of the project area as required by the traffic study. (Refer to IMC 18.15.260, Concurrency review.)
- c. Safety improvements and on-site improvements required by the City continue to be the responsibility of the applicant.

B. Application, Process and Procedures for Using TDRs:

1. Application: A complete application for a project proposing to use TDRs shall comply with IMC 18.04.150, Complete application – Sufficiency review.

2. Process:

- a. Development Agreements: A development agreement shall be processed through a Level 5 Review. A development agreement shall include property description and maps, as required in IMC 18.04.570, Master Site Plan contents, and establish the following development and design standards:
 - i. Residential density and/or square footage maximum;
 - ii. Provisions for exceeding maximum building height, if proposed, including modulation to lessen the bulk of the building;
 - iii. Required buffers to adjacent land;
 - iv. Mitigation of impacts to adjacent properties;
 - v. Landscaping standards;
 - vi. Consistency with the Comprehensive Plan vision for the subarea in which the property is located; and
 - vii. Other provisions as agreed to by the City and property owner.

- b. Urban Villages: A major modification to the existing Urban Village Development Agreement (Issaquah Highlands or Talus) is required to increase the existing development density for an Urban Village. The additional density due to TDRs may not be used outside of the existing Urban Village Development Areas. The major modification process for each Urban Village is established within the existing development agreements for the specific Urban Village.
 - c. Proposals for receiving sites using only the TDR unit p.m. peak trips shall be processed according to IMC 18.06.130, Table of permitted land uses.
 - d. Process required for additional height, impervious surface, density and commercial square footage is established in this section.
3. Procedures:
- a. Transportation Concurrency Review: Transportation concurrency review is required based on the total proposed number of residential units and/or commercial square footage which are calculated as established in subsection (A)(4) of this section, Transportation Concurrency.
 - b. Using Certified TDRs: The total number of development rights from a sending site may be transferred to one (1) or more designated receiving sites; provided, that the development rights shall only be transferred together as individual development rights. The individual uses of a development right may not be divided, but development rights purchased from one (1) site may be distributed to more than one (1) receiving site.
 - c. Impact Fees: All impact fees shall be based on the final number of residential units and the total commercial/retail square footage in the receiving site proposal.
 - d. Administrative Adjustment of Standards (AAS): An AAS may be required in order to accommodate the proposed development on the receiving site as provided for in subsections A of this section, Standards for Transferring Development Rights to a Receiving Site, and subsection B of this section, Application, Process and Procedures for Using TDRs, and as defined under IMC 18.07.280, Prohibited standards, that limits AAS applications.
 - e. Conditions of Approval: The conditions of approval for the Land Use Development Permit shall include: (1) requirement of developer to purchase, record and certify the TDRs prior to release of Building Permits; (2) issuance, by the Planning Director, of an updated TDR certificate and/or letter of intent for the sending site(s); and (3) the extinguishing document for sending and receiving site to be recorded by receiving site property owner before Building Permit issuance.
 - f. Notice of Decision: Notice of Decision shall be provided in accordance with IMC 18.04.240, Notice of decision. A Notice of Decision for the project shall clearly state: (1) the number of TDRs transferred to the receiving site; and (2) the incorporation of TDRs into the approved project through the total density, p.m. peak trips, square footage, impervious surface, height and other related standards.
 - g. TDR Certificates: TDR certificates are valid only for the specified parcel for which they were originally purchased and may not be transferred to a different parcel unless the original parcel is subdivided in accordance with subsection D

of this section, Subdivision of TDR Receiving Sites, or if the original proposal has been withdrawn by the property owner or denied by the City.

C. Requirements Prior to the Release of Building Permits for Receiving Site Projects Using TDRs: Following Building Permit approval, and prior to Building Permit issuance the receiving site applicant shall deliver the TDR certificates and proof of the transaction showing the purchase of the development rights by the applicant for use at a receiving site to the Permit Center. The development rights must be purchased and a TDR extinguishment document recorded on the sending site and receiving site parcels conveying transferable development rights (TDRs) as defined in IMC 18.10.2040(B), TDR Certification.

D. Subdivision of TDR Receiving Sites:

1. Plat Application: TDR receiving sites may be subdivided in accordance with the requirements of Chapter 18.13 IMC, Subdivisions. The preliminary plat or short plat application shall include a pro rata portion of the development rights transferred to the original parcel to each parcel created by the subdivision. At time of application, the applicant shall provide a signed option letter indicating the buyer, seller, sending and receiving site tax parcel number(s) and the number of development rights to be acquired. The pro rata assignment of transferred development rights shall only be in whole units. Individual TDRs may not be divided and the individual parts of a TDR may not be assigned to a new parcel.
2. Plat Modifications: The Hearing Examiner's decision on a preliminary plat and the Director's decision on a short plat may modify the assignment of TDRs proposed by the applicant when such modification is necessary to comply with the provisions of subsection B of this section or the objectives of IMC 18.13.010, Purpose.
3. Plat Approval: Upon plat approval, the new assignment of the TDRs shall be shown on the face of the Short Plat or Final Plat approved by the City and shall be recorded with the County Records and Elections. Final Plat approval shall be contingent on the applicant providing TDR certificates with the equivalent number of additional development rights necessary within the plat as approved by the City. (Ord. 2434 § 1, 2005).

18.10.2060 Appeals.

A. Any decision under this section will not be subject to appeal except as part of an appeal of the entire project. An appeal of TDRs may be incorporated under a project appeal under IMC 18.04.250, Administrative Appeals.

B. Decisions by the Hearing Examiner regarding the transfer of development rights may be appealed to Superior Court in accordance with IMC 18.04.258, Judicial or Growth Management Hearings Board Appeals. (Ord. 2434 § 1, 2005).

18.10.2070 Monitoring TDR certificates.

A. The City shall keep records and monitor both the issuance and transfer of TDR certificates and related conservation easements, and the development they represent.

B. An annual status report on the issuance and transfer of TDRs and related stewardship plans shall be made. (Ord. 2434 § 1, 2005).

18.10.2080 Expiration and repeal.

A. Development rights that have been transferred in accordance with this chapter and have been recorded with the County Auditor shall remain with the receiving site and shall not expire until the project is completed.

B. If this chapter of the IMC is repealed by the City Council, the density of all sending sites not transferred as TDRs shall be the density allowed by IMC 18.07.070, Density. If some, but

not all, of the development rights from one (1) sending site were sold, the remainder of the property shall be developed as allowed in the conservation easement and by IMC 18.07.070, Density, unless an agreement with the City Council was approved prior to the repeal of this chapter. (Ord. 2434 § 1, 2005).

18.10.2090 Other authority.

Nothing in this chapter is intended to limit the City’s authority under the State Environmental Policy Act or any other source. The Planning Department shall be responsible for administering this Code as established in IMC 18.01.050, Authority and vested rights. (Ord. 2434 § 1, 2005).

Exhibit B

INTERLOCAL COOPERATION AGREEMENT BETWEEN KING COUNTY AND THE CITY OF ISSAQUAH FOR OPEN SPACE ACQUISITION PROJECTS

THIS INTERLOCAL COOPERATION AGREEMENT is entered into between the CITY OF ISSAQUAH ("City") and KING COUNTY ("County").

Article I. Recitals

On February 27, 1989, the King County Council passed Ordinance 8867, which established a process to allocate the proceeds of the Conservation Futures Fund, including matching contribution requirements for jurisdiction receiving funds.

On September 21, 1989, the King County Council passed Ordinance 9128, which established a Conservation Futures Levy Fund to provide for the receipt and disbursement of Conservation Futures tax levy proceeds and established conditions for use of the Fund, including conditions covering allowable cost and expenses.

On July 21, 2003, the King County Council passed Ordinance 14714, authorizing funding allocation procedures for King County Conservation Futures tax levy collections and amending Ordinance 8867, Section 2, as amended, and K.C.C. 26.12.020, adding new sections to K.C.C. Chapter 26.12 and recodifying K.C.C. 26.12.020.

The Open Space Citizens Advisory Committee has recommended an allocation of Conservation Futures funds to specific projects from the Conservation Futures Levy Fund following notification to the suburban cities that funds were available, provision of an opportunity for the suburban cities to respond, and receipt by the committee of requests for funding, all pursuant to Ordinance 8867, as amended by Ordinance 14714.

The King County Council, by Ordinance 15083, allocated Conservation Futures funds to certain suburban cities projects, and by Ordinance 15083 has authorized the King County Executive to enter into an interlocal cooperation agreement with the City in order to initiate the Suburban City TDR Incentive Partnership project.

Pursuant to King County Ordinances 8867, 9128 and 14714, Washington Statute Chapter 84.34 R.C.W. and Washington Statute Chapter 39.34 R.C.W., the parties agree to the following:

Article II. Definitions

1. Open Space

The term "open space" or "open space land" means:

- a.) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly; or
- b.) any land area, the preservation of which in its present use would
 - (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, or
 - (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or
 - (iv) enhance the value to the public of abutting or neighboring parks,

forests, wildlife reserves, natural reservations or sanctuaries or other open space, or
(v) enhance recreational activities, or
(vi) preserve historic sites, or
(vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or
(viii) retain in its natural state tracts of land of not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification, or
(ix) any land meeting the definition of farms and agricultural conservation under Subsection (8) of R.C.W. 84.34.020.

As a condition of granting open space classification, the legislative body may not require public access on land classified under (b) (iii) of this subsection for the purpose of promoting conservation of wetlands.

2. Project

The term "Project" means specific projects which meet open space criteria as described in King County Ordinance 8867, as amended by Ordinance 14714 and R.C.W. 84.34.020, and which are attached to and incorporated by reference in King County Ordinance 14409 or added to the list of approved projects by the County.

3. Conservation Futures

The term "Conservation Futures" means developmental rights which may be acquired by purchase, gift, grant, bequest, devise, lease or otherwise, except by eminent domain, and may consist of fee simple or any lesser interest, development right, easement, covenant, or other contractual right necessary to protect, preserve, maintain, improve, restore, limit future use of, or otherwise conserve open space land, all in accordance with the provisions of Washington Statute Chapter 84.34 R.C.W. and King County Ordinance 8867, as amended by Ordinance 14714.

Article III. Purpose of the Agreement

The purpose of this agreement is to create a cooperative arrangement between the City and the County relating to the Projects and to define the terms and conditions governing both parties' obligations created by this agreement.

Article IV. Term of Agreement

This agreement shall be continued in full force and effect and binding upon the parties hereto upon execution of the agreement by both parties. The terms of the agreement shall be indefinite. The agreement will be terminated if the City is unable or unwilling: 1) to expend the funds provided through this agreement; 2) to satisfy the matching requirements contained in this agreement; and 3) upon reimbursement by the City to the County of all unexpended funds provided by the County pursuant to this agreement in the manner and amounts described below.

Article V. Conditions of Agreement

Section 5.1 -- Project Descriptions. Funds available pursuant to this agreement may be used only for Projects listed in Attachment A, which is incorporated herein by reference, or such substituted Projects as may be approved by the County as set forth below. All County funded Projects must meet open space criteria as described in King County Ordinance 8867, as amended by Ordinance 14714, and Washington Statute Chapter 84.34.020 R.C.W..

Section 5.2 -- Use of Funds. Funds provided to the City pursuant to this agreement as well as funds provided by the City as match pursuant to this agreement may be used only for expenses related to property acquisition. Those expenses include appraisals, title searches, negotiations, administrative overhead, and the cost of actual acquisition or purchase options, all in accordance with the provisions of Section 5 of Ordinance 14714. Funds utilized pursuant to this agreement may not be used to purchase land obtained through the exercise of eminent domain.

Section 5.3 -- Substitution/Deletion of Projects. If the City does not proceed with the Projects described in Section 5.1 of this agreement, the City may reimburse the County all funds provided in good faith to acquire the property for open space, plus accrued interest earnings on the unexpended balance. Alternatively, the City may submit specific requests for project reprogramming to the County for its approval. All projects proposed for reprogramming must meet open space criteria as described in King County Ordinance 8867, Section 1, as amended by Ordinance 14714, and Washington Statute Chapter 84.34.020 R.C.W., be submitted for recommendation by the County's Citizens Oversight Committee or its successor, and be approved by action of the King County Council. All reprogramming requests shall be submitted to the County's Department of Natural Resources, Capital Projects and Open Space Acquisition Section, or its successor.

Section 5.4 -- Eminent Domain. If any Project requires the exercise of eminent domain to acquire the property, all funds provided pursuant to this agreement plus accrued interest on such funds shall be reprogrammed as provided in this agreement or repaid to the County.

Article VI. Responsibilities of the City

Section 6.1 -- Matching Requirements. Any Project funded by Conservation Futures Levy proceeds shall be supported by the City in which the Project is located with a matching contribution which is no less than the amount of Conservation Futures Levy Funds allocated to the Project. This contribution may be in the form of cash, land trades with a valuation verified by an appraisal conducted by a MAI certified appraiser, or credits for other qualifying open space acquired on or after January 1, 1989. Any City match, other than cash, shall require County approval. County approval and County acceptance of the City's match will be transmitted in writing to the City by the County's Manager of the Capital Projects and Open Space Acquisition Section or their successor in functions.

If the Project involves a partnership, as defined in Ordinance 14714 SECTION 5, the participating partners shall determine the allocation of the contributions to the matching requirements of this agreement, so long as the total match is no less than the amount of Conservation Futures Levy Funds provided by the County. Such matching contribution must be available within two years of the City's application for County funds to support Projects identified herein or approved substitute Projects.

If such commitment is not timely made, the County shall be released from any obligation to fund the Project in question, and the City shall reimburse the County all funds provided to the City pursuant to this agreement plus accrued interest on such funds. All such moneys will be available to the County to reallocate to other approved Projects. By appropriate legislature

action taken not more than 60 days following the effective date of this agreement, the City shall commit to contribute its required match.

Section 6.2 -- Project Description. As part of the application to receive Conservation Futures Levy Funds from the County, the City shall submit the following information concerning each project: 1) a narrative description of the project; 2) a description of the specific uses for Conservation Futures Levy Funds in the Project; and 3) a description of the means by which the City will satisfy the matching requirements contained in this agreement.

Section 6.3 -- Reporting. All funds received pursuant to this agreement and accrued interest there from will be accounted for separately from all other City funds, accounts, and moneys. Until the property described in the Project is acquired, and all funds provided pursuant to this agreement expended, the City shall provide annual written reports to the County within 30 days of the end of each relevant time period. The annual report shall contain the following information: a) an accounting of all cash expenditures and encumbrances for support of the Project; b) the status of each Project and any changes to the approved time line; and c) other relevant information requested by the County for the purpose of determining compliance with this agreement.

Following acquisition of the property and expenditure of all funds provided pursuant to this agreement, the City shall provide the County with a final report, within 90 days of the end of the calendar year in which all funds were expended. Said report shall contain a summary of all project expenditures, a description of the project status and accomplishments and other relevant information requested by the County for the purpose of verifying compliance with this agreement.

The City shall also provide the County, within 90 days of the end of each calendar year, annual reports which specify any change in the status of the Project during the prior year and any change in the status of the Project which the City reasonably anticipates during the ensuing year. Such reports shall be required only if a change has taken place or is anticipated, except as provided above for ongoing and final project reports. All such reports shall be submitted to the County's Department of Natural Resources and Parks, Capital Projects and Open Space Acquisition Section, or its successor.

Section 6.4 -- Disposition of Remaining Funds.

If the City does not expend all funds provided through this agreement and no substitute project is requested or approved as to the excess funds, such funds shall be refunded to the County. For purposes of this section, "funds" shall include all moneys provided by the County plus interest accrued by the City on such moneys.

Section 6.5 -- Maintenance in Perpetuity. The City, and any successor in interest, agree to maintain properties acquired with funds provided pursuant to this agreement as open space in perpetuity. If the City changes the status or use of properties acquired with funds provided pursuant to this agreement to any purpose, the City shall pay the County an amount in cash to be mutually determined or substitute other property acceptable to the County. In either case, the value of the property shall be established at the time of the change in status or use, based upon the changed status or use, and not based on its value as open space.

Upon changes in status and/or use of the property acquired herein, at its own cost, the City will provide the County an independent MAI appraisal in accordance with this section. The value established by the appraisal will not be binding on the County. The City shall provide the County with written notice prior to the change of use and shall reimburse the County within 90 days of such notification. Reimbursement not received within 90 days will accrue interest at the then legal rate.

Article VII. Responsibilities of the County

Subject to the terms of this agreement, the County will provide Conservation Futures Levy Funds in the amount shown in Attachment A. The City may request additional funds; however, the County has no obligation to provide funds to the City in excess of the amount shown in Attachment A. The County assumes no obligation for future support of the Projects described herein except as expressly set forth in this agreement.

Article VIII Other Provisions

Section 8.1 -- Hold Harmless and Indemnification.

A. The County assumes no responsibility for the payment of any compensation, fees, wages, benefits, or taxes to or on behalf of the City, its employees, contractors or others by reason of this agreement. The City shall protect, indemnify and save harmless the County, its officers, agents and employees from any and all claims, cost and whatsoever occurring or resulting from: 1) the City's failure to pay any compensation, fees, wages, benefits or taxes; and 2) the supplying to the City of works services, materials or supplies by City employees or agents or other contractors or suppliers in connection with or in support of performance of this agreement.

B. The City further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception, which occurs due to the negligent or intentional acts of this agreement by the City, its officers, employees, agents, or representatives.

C. The City shall protect, indemnify and save harmless the County from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the City, its officers, employees or agents. For purpose of this agreement only, the City agrees to waive the immunity granted it for industrial insurance claims pursuant to Washington Statute Chapter 51 to the extent necessary to extend its obligations under this paragraph to any claim, demand, or cause of action brought by or on behalf of any employee, including judgments, awards and costs arising there from including attorney's fees.

Section 8.2 -- Amendment. The parties reserve the right to amend or modify this agreement. Such amendments or modifications must be by written instrument signed by the parties and approved by the respective City and County Councils.

Section 8.3 -- Contract Waiver. No waiver by either party of any term or condition of this agreement shall be deemed or construed to be a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provision of this agreement. No waiver shall be effective unless made in writing.

Section 8.4 -- Entirety. This agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated are excluded. This agreement merges and supersedes all prior negotiations, representations, and agreements between the parties relating to the projects and constitutes the entire agreement between the parties. The parties recognize that time is of the essence in the performance of the provisions of this agreement.

ATTACHMENT A to EXHIBIT B
CITY OF ISSAQUAH

CONSERVATION FUTURES ALLOCATIONS & PROJECT DESCRIPTION

Issaquah Creek Greenway \$ 200,000

PROJECT DESCRIPTION

Acquisition of open space property within the Issaquah Creek Greenway.

