

INTERLOCAL COOPERATION AGREEMENT BETWEEN KING COUNTY  
AND THE CITY OF Kirkland  
SUBURBAN CITY OPEN SPACE ACQUISITION PROJECTS

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

Article I. Recitals

On September 21, 1989, the King County Council passed Ordinance 9128, which established a Conservation Futures Levy Fund and appropriated a total of \$2,900,000 in conservation futures levy proceeds to King County (\$1,100,000), the City of Seattle (\$1,100,000) and suburban cities (\$700,000).

Ordinance 9128 also established conditions for use of the Fund, including conditions covering allowable projects, costs and expenses.

The Open Space Citizens Advisory Committee has recommended an initial and a secondary allocation of Conservation Futures funds from the Suburban City Open Space Acquisition Project 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.

The King County Council by Motion 7742 has approved the initial allocation and by Motion 8120 the secondary allocation of 1989 Conservation Futures funds, and authorized the King County Executive to enter into interlocal cooperation agreements with the suburban cities in order to initiate the

approved projects.

Pursuant to King County Ordinance 9128, King County Motion 7742, Washington Statute Chapter 84.34 RCW and Washington Statute Chapter 39.34, the parties agree to follows:

## 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: 1) conserve and enhance natural or scenic resources; or 2) protect streams or water supply; or 3) promote conservation of soils, wetlands, beaches or tidal marshes; or 4) enhance the value to the public of abutting or neighboring parks, forests, wildlife reserves, natural reservations or sanctuaries or other open space; or 5) enhance recreational activities; or 6) preserve historic sites, or 7) retain in its natural state tracts of land of not less than five acres 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.

### 2. Project

The term "Project" means specific projects which meet open space criteria as described in King County Ordinance 8867, Section 1, and RCW 84.34.020 and which are attached to and incorporated by reference in King County Ordinance 9071 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 RCW and King County Ordinance 8867.

#### 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 and continue 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 Description. 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, Section 1, and Washington Statute Chapter 84.34.020 RCW.

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 3 of Ordinance 9128. 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 by the County less approved expenses previously incurred 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, and Washington Statute Chapter 84.34.020 RCW, be submitted to and recommended 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 Parks, Planning and Resources, Office of Open Space.

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 Future 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 cash match will be transmitted in writing to the City by the Manager of the County's Office of Open Space or his successor in function.

If the Project involves two or more suburban cities, those

cities shall determine the allocation of 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 monies 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 therefrom will be accounted for separately from all other City funds, accounts and monies. Until the property described in the Project is acquired and all

funds provided pursuant to this agreement expended, the City shall provide semi-annual written reports to the County within 30 days of the end of each relevant time period. The semi-annual report shall contain the following information: a) an accounting of all cash expenditures and encumbrances in 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 Parks, Planning and Resources, Office of Open Space.

Section 6.4 - Disposition of Remaining Funds. Open Space Bond funds as authorized by Ordinance 9071, are available for Projects identified in this agreement. If allocation of Conservation Futures Levy funds to such Projects produces an excess of revenues over the approved cost of the Projects, then as to such excess funds, the City will: 1) reprogram such excess funds as set forth in this agreement; or 2) justify to the County's satisfaction that such excess funds are necessary to complete the Project; or 3) repay such excess funds to the County.

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 monies provided by the County plus interest accrued by the City on such monies.

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 on 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, costs and whatsoever occurring or resulting from: 1) the City's failure to pay any compensation, wage, fee, benefits or taxes; and 2) the supplying to the City of work, 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 or failure for any reason to comply with the terms of this agreement by the City, its officers, employees, agents or representatives.

C. The City shall protect, defend, 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 purposes of this agreement only, the City agrees to waive the immunity granted it for industrial insurance claims pursuant to Washington Statute Chapter 52 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 employees, including judgments, awards and costs arising therefrom including attorneys' 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

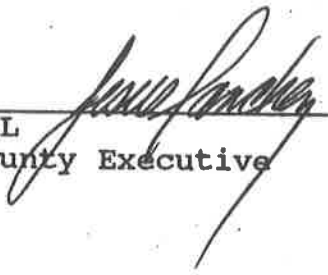
of any subsequent breach whether of the same or different provision of this agreement. No waiver shall be effective unless made in writing.

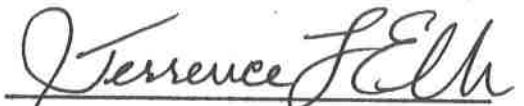
Section 8.4 - Entirety. This agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated are excluded. This agreement merges and supersedes all prior negotiations, representations and agreements between the parties relating to the projects 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.

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

KING COUNTY

CITY OF Kirkland


  
\_\_\_\_\_  
TIM HILL  
King County Executive

By:   
\_\_\_\_\_  
Terrence L. Ellis  
City Manager

Date: 4/2/91  
\_\_\_\_\_  
Acting under authority of  
authority of Motion 8120

Date: 2/07/91  
\_\_\_\_\_  
Acting under authority of  
authority of Motion R-3650

Approved as to form:

  
\_\_\_\_\_  
NORM MALENG  
King County Prosecuting Attorney

ATTACHMENT A  
INTERLOCAL COOPERATION AGREEMENT  
SUBURBAN CITY OPEN SPACE  
ACQUISITION PROJECTS

EXHIBIT C: SUBURBAN CITY PROJECTS (1989 \$s)

Name	City	Expenditure Cash Flow--1										Total			
		Cost	Jan-Mar 1990	Apr-Jun 1990	Jul-Sep 1990	Oct-Dec 1990	Jan-Mar 1991	Apr-Jun 1991	Jul-Sep 1991	Oct-Dec 1991	Jan-Mar 1992		Apr-Jun 1992	Jul-Sep 1992	Oct-Dec 1992
White R./Lakeland Mills	Auburn	1,000,000													1,000,000
Mercer Slough	Belleveue	4,100,000				600,000	600,000	600,000							4,100,000
Kelsey Creek	Belleveue	1,530,000	2,230,000		650,000										1,530,000
Lk Hill Greenbelt	Belleveue	530,000			800,000										530,000
Jones rail	Blk Diamond	482,955		20,000		700,000			230,000		300,000				482,955
Bothel ding	Bothel	751,000				154,320				230,000					751,000
Parkview Open Space	Des Moines	650,000		220,000											650,000
N. Midway Park	Des Moines	100,000		30,000		200,000	200,000								100,000
Des Moines Cr Trail	Des Moines	100,000		30,000											100,000
Snoqualmie R. Trail	Duvall	325,220		30,000											325,220
Hylebos Park Addition 01	Federal Way	38,000	10,000		80,000				125,300		175,300				38,000
Hylebos Park Addition 02	Federal Way	370,500	7,075		105,121	105,121									370,500
Adelaide/Lakota	Federal Way	1,102,900	80,110		331,654	331,654	105,121	53,061							1,102,900
SH 363rd between 12 & 14 SW	Federal Way	314,600	5,000		80,205	80,205	80,205	163,827							314,600
Spring Valley	Federal Way	382,400	7,140		80,205	80,205	80,205	44,103							382,400
Lutherland/Lk Killarney	Federal Way	1,696,500	21,710		107,215	107,215	107,215	53,607							1,696,500
Camelot Park Addition	Federal Way	1,139,450	21,250		475,654	475,654	475,654	237,027							1,139,450
Cooper Min Access	Federal Way	255,650	4,779		319,472	319,472	319,472	150,736							255,650
Squak/Issaquah Cr Tr	Issaquah	150,000			71,670	71,670	71,670	25,630							150,000
Green R. Corridor	Issaquah	150,000				75,000	75,000								150,000
Lk Fenwick Tr	Kent	840,000	75,000			75,000	75,000								840,000
Juanita Bay Acq	Kirkland	600,000	115,000	100,000		200,000	50,000	200,000	175,000	40,000					600,000
Totes Lk	Kirkland	250,000	600,000	100,000		155,000	50,000	115,000	175,000	20,000					250,000
Houghton Beach Access	Kirkland	300,000	25,000				225,000								300,000
Marine Park Access	Kirkland	550,000	25,000			225,000	30,000								550,000
Lake Forest Park Open Space System	Lake Forest Park	425,000	25,000			300,000									425,000
First Hill Park & Trail	Mercer Island	616,603	130,000	150,000		150,000	100,000								616,603
Mercerdale	Mercer Island	130,000	130,000												130,000
3rd Fl. Greenbelt	Mercer Island	950,000								154,000	154,000	154,000	154,603		950,000
Hill Creek	Normandy Park	500,000	20,000	400,000											500,000
Colligate Farm	North Bend	200,000	20,000	100,000											200,000
Clear Creek Evans Trail	Redmond	2,150,000	220,000	220,000		220,000	220,000	220,000	270,000	232,000					2,150,000
Cedar River Trail	Renton	2,009,935	107,000	100,000		201,000	602,935	1,200,000							2,009,935
Conry Cr rail	Renton	375,000													375,000
Springh. rail	Renton	400,000													400,000
Lake Wash waterfront	SeaTac	150,000													150,000
North SeaTac Park	SeaTac	2,600,000	50,000	637,500		637,500	637,500	637,500			30,000	120,000			2,600,000
Overton Hill Greenbelt	Tukwila	145,000													145,000
Washish/Green R. Lots	Tukwila	440,000		440,000											440,000
Acadian Pond	Tukwila	370,000													370,000
Apple Tree	Tukwila	216,000				370,000									216,000
Southgate	Tukwila	29,000													29,000
Greenwood	Multi	344,960	25,000	319,960				216,000							344,960
Dark Lake	Multi	1,065,000													1,065,000
Derurban Trail	Multi	1,572,000				335,000	335,000	335,000							1,572,000
Black River Wetland	Multi	324,000		100,736		100,736	100,736	204,464		335,000	204,464	204,464			324,000
and Sale Expenses		49,707	49,707	162,000		162,000									49,707
Total		34,904,252	0	5,334,707	7,537,955	6,015,564	5,225,236	4,285,399	3,464,964	651,464	300,464	629,736	621,000	319,603	34,904,252