

November 9, 2006

The Honorable Larry Phillips
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember Phillips:

Enclosed is an ordinance authorizing King County to enter into an interlocal cooperation agreement with the City of Issaquah for the transfer of development rights between rural unincorporated King County and the City of Issaquah.

The King County Transfer of Development Rights (TDR) Program has worked collaboratively with the City of Issaquah to develop a new TDR Program. TDR is a voluntary land use incentive which provides financial incentives for willing landowners to sell development rights in exchange for a permanent conservation easement. This TDR partnership with the City of Issaquah implements important regional growth management goals in the King County Comprehensive Land Use Plan, the King County Greenprint, the Puget Sound Salmon Recovery Plan and the Cascade Agenda.

As part of Issaquah's TDR program, the Issaquah City Council has amended the Issaquah zoning code to establish new base and maximum densities for residential and commercial receiving sites. It also provides for increased building height and other incentives for increased development inside the City, and allows for the potential transfer of up to 75 rural development rights from the adjacent Issaquah Creek Watershed.

The enclosed TDR interlocal agreement, which was approved by the King County Prosecutor's Office and unanimously adopted by the City Council, provides \$200,000 to the City of Issaquah in budgeted Conservation Futures funds for the acquisition of urban open space inside the City in exchange for accepting rural development rights. This funding was recommended by the Citizens Oversight Committee for Conservation Futures and was adopted in the 2005 Annual Capital Improvement Project Budget.

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The City of Issaquah, in a voluntary partnership with rural landowners and the King County TDR program, can permanently protect portions of its backyard through preservation of additional lands in the Issaquah Creek Watershed. This acquisition is limited to open space only and must be consistent with the RCW requirements in Title 84 and King County Conservation Futures Ordinance 10150. If you have any questions, please contact Mark Isaacson, Division Director of the, at 206-296-6587; or Mark Sollitto, Manager of the King County TDR Program in the Office of Rural and Resource Program in the Water and Land Resources Division of the Department of Natural Resources and Parks, at 206-296-1941.

Thank you for your consideration of this request.

Sincerely,

Ron Sims
King County Executive

Enclosures

cc: King County Councilmembers

ATTN: Ross Baker, Council Chief of Staff
Shelley Sutton, Policy Staff Director
Anne Noris, Clerk of the Council

Tim Barnes, Deputy Prosecuting Attorney, King County Prosecutor's Office

Pam Bissonnette, Director, Department of Natural Resources and Parks (DNRP)

Mark Isaacson, Division Director, Water and Land Resources Division (WLRD), DNRP

Mark Sollitto, Manager, Transfer of Development Rights Program, WLRD, DNRP

..Title

AN ORDINANCE related to growth management and the protection of natural resources; authorizing the King County executive to execute interlocal agreements with the city of Issaquah to transfer rural development rights into the city of Issaquah and provide \$200,000 in conservation futures funding for the acquisition of open space inside the city of Issaquah.

..Body

STATEMENT OF FACTS:

1. The State of Washington Growth Management Act (GMA), RCW 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.
2. The Growth Management Act identifies transfer of development rights as an innovative technique for land use management. 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. King County and the city of Issaquah share a common interest in protecting salmon habitat in the Issaquah Creek Watershed as required by the Endangered Species Act. King County and the city of Issaquah have a

long tradition of developing innovative strategies to conserve resource and environmentally sensitive lands that are essential to this region's quality of life.

3. Protecting rural farms and forests, open space lands, and wildlife

habitat are goals of both the Countywide Planning Policies and the King County Comprehensive Plan. By city of Issaquah Ordinance # 2324, the city of Issaquah has adopted a transfer of development rights program including amendments to its Land Use Code authorizing use of development rights from rural King County inside the city of Issaquah.

Two hundred thousand dollars has been appropriated in the 2005 Budget Ordinance, Ordinance #15083, Project #315177 for the suburban city TDR incentive open space acquisition project.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The executive is authorized to execute interlocal agreements, substantially in the form attached, with the city of Issaquah to transfer rural development rights into the city of Issaquah and to provide \$200,000 in King County conservation futures funding for the acquisition of open space land inside the city of Issaquah as defined in RCW 84.34 and consistent with the provisions of King County Code 26.12.

SECTION 2. The executive is authorized to execute an amendment to the conservation futures interlocal agreement with the city of Issaquah, substantially in the form attached, for the disbursement of \$200,000 in conservation futures funds appropriated in Ordinance # 15083, Project #315177.

SECTION 3. A copy of the above-referenced interlocal agreements shall be

maintained on file at the department of natural resources and parks.

Attachments: A. An Interlocal Agreement Implementing a Transfer of Development Rights Program Between Unincorporated King County and the City of Issaquah

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.

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”) as identified on Exhibit A, attached hereto and made a part of this Agreement, 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 is developing 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 County acknowledges that the provisions of the City and County TDR ordinances are consistent with the intent and purposes of the Program. The City shall continue to permit the use of Rural Development Rights at Receiving Sites in the City during the term of this Agreement from priority Sending Sites identified in Exhibit A, unless other mutually agreeable Sending Sites are approved by the City. The City may modify the terms and conditions upon which Rural Development Rights may be used at Receiving Sites in the City after consulting with the County.

C. 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 to execute a transfer of development rights extinguishment document in conformance with the King County Code 21A.37. Note: Current draft language is proposed as: Section **IMC 18.10.2040 TDR Certification (B) (1)** (b) Outside City Limits: TDR certification on properties outside the City limits within King County shall be as required by KCC 21A.37.

III. RESPONSIBILITIES AND POWERS OF KING COUNTY

A. Program Administration. 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. 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.

Exhibit A

City of Issaquah TDR Sending Area in King County: Private rural and resource lands, outside the Urban Growth Area, within the Issaquah Creek Basin. Transfers from private rural and resource lands inside the Issaquah Creek Basin shall be limited to sending sites as identified in the King County Code 21A.37.020 attached below, unless otherwise approved by the City:
K.C.C. 21A.37.020 Transfer of development rights (TDR) program - sending sites.

- A. For the purpose of this chapter, sending site means the entire tax lot or lots qualified under Subsection B of this section. Sending sites may only be located within rural or resource lands or urban separator areas with R-1 zoning, as designated by the King County Comprehensive Plan and cannot be in public ownership. If the sending site consists of more than one tax lot, the lots must be contiguous. For purposes of this section, lots divided by a street are considered contiguous if the lots would share a common lot line if the street was removed; this provision may be waived by the interagency committee if the total acreage of a rural or resource sending site application exceeds one hundred acres. A sending site shall be maintained in a condition that is consistent with the criteria in this section under which the sending was qualified.
- B. Qualification of a sending site shall demonstrate that the site contains a public benefit such that preservation of that benefit by transferring residential development rights to another site is in the public interest. A sending site must meet at least one of the following criteria:
 - 1. Designation in the King County Comprehensive Plan or a functional plan as an agricultural production district or zoned A;
 - 2. Designation in the King County Comprehensive Plan or a functional plan as forest production district or zoned F;
- C. For the purposes of the TDR program, acquisition means obtaining fee simple rights in real property, or a less than a fee simple right in a form that preserves in perpetuity the public benefit supporting the designation or qualification of the property as a sending site.
- D. If a sending site has any outstanding code violations, the person responsible for code compliance should resolve these violations, including any required abatement, restoration, or payment of civil penalties, before a TDR sending site may be qualified by the interagency review committee created under K.C.C. 21A.37.070. However, the interagency may qualify and certify a TDR sending site with outstanding code violations if the person responsible for code compliance has made a good faith effort to resolve the violations and the proposal is in the public interest.
- E. For lots on which the entire lot or a portion of the lot has been cleared or graded in accordance with a Class II, III or IV special forest practice as defined in chapter 76.09 R.C.W. within the six years prior to application as a TDR sending site, the applicant must provide an affidavit of compliance with the reforestation requirements of the Forest Practices Act, and any additional reforestation conditions of their forest practice permit. Lots on which the entire lot or a portion of the lot has been cleared or graded without any

required forest practices or county authorization, shall be not qualified or certified as a TDR sending site for six years unless the six-year moratorium on development applications has been lifted or waived or the landowner has a reforestation plan approved by the state Department of Natural Resources and King County. (Ord. 15032 § 40, 2004: Ord. 14199 § 240, 2001: Ord. 14190 § 4, 2001: Ord. 14045 § 59, 2001: Ord. 13274 § 4, 1998. Formerly K.C.C. 21A.55.130).

Exhibit B

SAMPLE AGREEMENT 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.

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

KING COUNTY

CITY OF ISSAQUAH

Ron Sims King
King County Executive

Ava Frisinger
Mayor

Date: _____
Acting under the authority of
Ordinance 14850

Date: _____

Approved as to form:

Approved as to form:

NORM MALENG
King County Prosecuting Attorney

Issaquah City Attorney

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.