

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

THIS INTERLOCAL COOPERATION AGREEMENT is entered into between the CITY OF CARNATION (“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 jurisdictions 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 Future 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 cities that funds were available, provision of an opportunity for the

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 18409, has approved the recommendation for the allocation of Conservation Futures Levy funds to specific city projects, and by Ordinance 18575 authorized the King County Executive to enter into an interlocal cooperation agreement with the City of Carnation in order to initiate the Carnation Tolt Commons Park open space acquisition project (Project).

Pursuant to King County Ordinances 8867, 9128, 13717, 14714, Washington Statute Chapter 84.34 RCW and Washington Statute Chapter 39.34, 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 (c) any land meeting the definition of farms and agricultural

conservation under subsection (8) of RCW 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 in RCW 84.34.020, and which are attached to and incorporated by reference in King County Ordinance 18409 or added to the list of projects approved 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, as amended by 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 Project 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 Project listed in Exhibit 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 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, and all other costs meeting the requirements of Section 5 of Ordinance 14714. In requesting reimbursement of funds for the Project, the City shall demonstrate to the County compliance with this Section 5.2. Funds utilized pursuant to this agreement may not be used to purchase land obtained through the exercise of eminent domain.

Section 5.3 -- Completion/Substitution/Deletion of Projects. The City shall complete the Project described in Section 5.1 of this Agreement within a two year period from the effective

date of the County ordinance appropriating funding for the Project. If the City does not meet this two year requirement, unless an approved application provides otherwise or a reprogramming request is timely approved as provided for below, the County shall be released from any obligation to fund the Project, and the County in its sole discretion may reallocate such funds for other projects in other jurisdictions. Alternatively, the City may submit specific requests for project reprogramming to the County for its approval within the two year period. 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 RCW, 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 and Parks, Open Space Acquisitions Unit, 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 an MAI certified appraiser, or of other open spaces acquired within the previous two years from the date of submittal of the application by the City for the Project

that are directly adjacent to the Project or in the County's determination is directly linked to the Project. 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 Designated Representative.

Section 6.2 -- Partnerships. If the Project involves a partnership with another jurisdiction, as provided for in Ordinance 14714, Section 5, as amended, the City and its participating partner(s) 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. If a partnership application is funded by this process, the City and the other jurisdiction shall be required to enter into an interlocal agreement with the County formalizing the relationship, roles and responsibilities for acquisition, ownership, matching contribution obligations and future maintenance. Such interlocal agreement must be fully executed before the County will disburse funds for the Project. The matching contribution from the partnership must be available within the two year timeframe for completion of the Project, per the requirements of Section 5.3.

If the availability of such matching contribution is not timely met, the County shall be released from any obligation to fund the Project in question, and the County in its sole discretion may reallocate such funds for other projects in other jurisdictions

Section 6.3 -- 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 6.4 -- Reporting. All funds received pursuant to this agreement and accrued interest therefrom 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 have been expended, the City shall provide an annual written report to the County Executive by January 31st of each year. The report shall include, for each project, the requirements as set forth in Ordinance 14714, Section 6. All such reports shall be submitted to the County's Department of Natural Resources and Parks, Open Space Acquisitions Unit, or its successor.

Section 6.5 -- Disposition of Remaining Funds. If the City does not expend all funds obligated to be provided through this agreement and no substitute project is requested or approved as to the excess funds, such funds, if held by the City, shall be refunded to the County. For purposes of this section, "funds" shall include all moneys obligated to be provided by the County plus interest accrued by the City on such moneys. Any funds in excess of those required to be provided by the County for the actual costs of the Project shall remain with the County for use in its sole discretion.

Section 6.6 -- 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 and to include in the real property records notice of this restriction. 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.

Projects carried out by the City in whole or in part with funds provided for under the terms of this agreement shall not be transferred or conveyed except by interlocal agreement, which shall provide that the land or interest in land shall be continued to be used for the purposes of King County Code 26.12.005 through 26.12.025, as amended from time to time, and in strict conformance with the uses authorized under RCW 84.34.230.

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 Exhibit 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 Exhibit A. The County assumes no obligation for future support of the Project 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 officer, employees, agent or representatives arising out of the performance of the terms of this agreement.

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 in the performance of its obligations under the terms of this agreement. For the purposes 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 therefrom 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 Project 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



Doy Constantine
King County Executive

Date: 12/11/2017
Acting under the authority of
Ordinance 18575

Approved as to form:



Dan Satterberg
King County Prosecuting Attorney


CITY OF CARNATION



Amy Arrington
City Manager

Date: 10/30/2017
Acting under the authority of
Ordinance AB17-35

Approved as to form:



City Attorney

EXHIBIT A

**2017 CONSERVATION FUTURES LEVY
CITY OF CARNATION ALLOCATION**

Jurisdiction	Project	Allocation
Carnation	Carnation Tolt Commons Park	\$25,000
TOTAL		\$25,000

Project Description:

1129219 Carnation – Carnation Tolt Commons Park

This new project will acquire an addition to the Carnation Tolt Commons Park in Carnation city center. It will provide an expansion of an existing community greenspace and farmers market.

City of Carnation (Carnation Tolt Commons Park) \$25,000