

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

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

Article I. Recitals

On September 21, 1989, the King County Council passed ordinance number 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 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 number 7742 has approved the initial allocation 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 as 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 (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) 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 number 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 and King County ordinance number 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 term of the agreement shall be indefinite. The agreement will be terminated if the City is unable or unwilling (i) to expend the funds provided through this agreement, (ii) satisfy the matching requirements contained in this agreement and (iii) 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 84.34.020 RCW, be submitted to and recommended by the County's Citizen 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.

Section 5.4 Eminent Domain. If any Project requires the exercise of eminent domain to acquire the property all funds provided pursuant to this argument 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 Conservations Futures Levy funds provided by the County.

Such 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; (3) a description of the means by which the City will satisfy the matching requirements contained in this agreement; and (4) if the City has more than 20,000 population, the City must certify that the Project is compatible with an approved open space master plan or its equivalent and provide such plan to the County.

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 quarterly written reports to the County within 30 days of the end of each relevant time period. The quarterly 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 annual reports, within 90 days of the end of each calendar year, which reports shall 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. All such reports shall be submitted to the County's Department of Parks, Planning and Resources.

Section 6.4 - Disposition of Remaining Funds.

It is anticipated that Open Space Bond funds will be 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 (i) reprogram such excess funds as set forth in this agreement, or

ii) justify to the County's satisfaction that such excess funds are necessary to complete the Project, or iii) 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 other 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.

At its own cost, the City will provide the County an independent M.A.I. 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 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 losses 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 7.3 - 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 7.4 - 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 supercedes 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 DES MOINES

Jesus Sanchez FOR
TIM HILL
King County Executive

By: Greg Prothman
GREG PROTHMAN
City Manager

Date: JUN 05 1990
Acting under authority of
authority of motion number
7742

April 13, 1990
Date:
Acting under authority of Motion of
the Council No. 4/12/90

Approved as to form:

Robert J. Stein
NORM MALENG
King County Prosecuting Attorney

