

06/21/99

Motion1
Clerk 06/28/99

Introduced By: Brian Derdowski

Proposed No.: 1999-0350

MOTION NO. **10783**

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A MOTION authorizing the county executive to enter into an interlocal agreement with the city of Seattle concerning the distribution and administration of Washington State Department of Community, Trade, and Economic Development grant funds under the state Growth Management Act.

WHEREAS, the Washington State Legislature enacted chapter 36.70A RCW, referred to in this motion as "the Act," which requires King County to adopt countywide planning policies in cooperation with cities within King County, and

WHEREAS, by interlocal agreement, King County and the cities in King County established the Growth Management Planning Council representing King County, the city of Seattle and other cities within King County to develop and adopt countywide planning policies under RCW 36.70A.210, and

WHEREAS, the state of Washington through the adoption of the Act and its administration by the Department of Community, Trade, and Economic Development, will make funds available for expenditure by local jurisdictions to carry out the purposes of the Act, and

1 WHEREAS, the Act directs the Department of Community, Trade, and Economic
2 Development to establish funding levels for planning and technical assistance grants for
3 counties and cities that plan under the Act for the purpose of compliance with the Act, and

4 WHEREAS, King County and the cities within King County have been designated
5 together as a county region by the Department of Community, Trade, and Economic
6 Development for the purpose of receiving department funds, and

7 WHEREAS, King County was designated as the fiscal agent to receive and
8 distribute growth management grant funds in 1990, and has continued to serve as the fiscal
9 agent for cities within King County for that purpose since that time, and

10 WHEREAS, the Growth Management Planning Council recommends that the
11 Department of Community, Trade, and Economic Development grant funds be distributed
12 to the jurisdictions in King County according to a formula agreed to by the Growth
13 Management Planning Council members, and

14 WHEREAS, the parties hereto enter into this agreement in accordance with the
15 state Interlocal Cooperation Act, chapter 39.34 RCW, for the purpose of distributing and
16 administering Department of Community, Trade, and Economic Development funds and
17 for performing activities in accordance with and under authority of the Act;

18 NOW, THEREFORE, BE IT MOVED by the Council of King County:

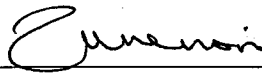
1 The county executive is authorized to execute an interlocal agreement, substantially
2 in the form of the attached with the city of Seattle relating to the distribution and
3 administration of Washington State Department of Community, Trade, and Economic
4 Development grant funds under the state Growth Management Act.

5 PASSED by a vote of 12 to 0 this 4th day of October, 1999.

6 KING COUNTY COUNCIL
7 KING COUNTY, WASHINGTON

8 
9 Chair

10 ATTEST:

11 
12 Clerk of the Council

13 Attachments: An Interlocal Cooperation Agreement for the Distribution and
14 Administration of Certain Washington Department of Community, Trade
15 and Economic Development Grant Funds Under the State of Washington
16 Growth Management Act, RCW Ch. 36.70A

10783

AN INTERLOCAL COOPERATION AGREEMENT FOR THE DISTRIBUTION AND ADMINISTRATION OF CERTAIN WASHINGTON DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT GRANT FUNDS UNDER THE STATE OF WASHINGTON GROWTH MANAGEMENT ACT, RCW CH. 36.70A

THIS AGREEMENT, signed this _____ day of _____, 1999 by and between The City of Seattle ("the Municipal Jurisdiction") and King County.

WHEREAS, the Washington State Legislature enacted RCW Ch. 36.70A, hereinafter referred to as "the Act," which requires King County to adopt countywide planning policies in cooperation with cities within King County; and

WHEREAS, by Interlocal Agreement, King County and the cities in King County established the Growth Management Planning Council (GMPC) representing King County, The City of Seattle, and other cities within King County to develop and adopt Countywide planning policies pursuant to RCW 36.70A.210; and

WHEREAS, the State of Washington through the adoption of the Act and its administration by the Department of Community, Trade and Economic Development ("CTED"), will make funds available for expenditure by local jurisdictions to carry out the purposes of the Act; and

WHEREAS, the Act directs CTED to establish funding levels for planning and technical assistance grants for counties and cities that plan under this Act for the purpose of compliance with RCW Ch. 36.70A; and

WHEREAS, King County and the cities within King County have been designated together as a county region by CTED for the purpose of receiving CTED funds; and

WHEREAS, King County was designated as the fiscal agent to receive and distribute growth management grant funds in 1990, and has continued to serve as the fiscal agent for cities within King County for that purpose since that time; and

WHEREAS, the GMPC recommends that CTED grant funds be distributed to the jurisdictions in King County according to a formula agreed to by the GMPC members; and

WHEREAS, the parties hereto enter into this Agreement pursuant to and in accordance with the State Interlocal Cooperation Act, RCW Ch. 39.34, for the purpose of distributing and

administering CTED funds and for performing activities in accordance with and under authority of the Act;

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING CIRCUMSTANCES AND IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN, IT IS AGREED THAT:

I. GENERAL AGREEMENT

King County and the Municipal Jurisdiction agree to comply with the provisions of the regional work program as agreed by CTED and the GMPC by undertaking growth management activities, including coordination of planning efforts to achieve consistency, the development of a public participation process, and undertaking other coordinated planning activities as specified in the Growth Management Act, RCW Ch. 36.70A.

II. ENTITLEMENT

The purpose of this Agreement is to authorize the payment of funds to the Municipal Jurisdiction for implementing the Regional Work Program. By entering this Agreement the Municipal Jurisdiction is eligible to receive the amount specified for it by the GMPC annual distribution formula.

Each year, upon notification by CTED that additional GMA Grant funds are available to the County and its cities, the distribution formula may be recalculated with the cooperation of the County and its cities. The Municipal Jurisdiction will be notified in writing of the amount to be received by the Municipal Jurisdiction according to the latest GMPC formula recalculation.

III. USE OF FUNDS: GENERAL PROVISIONS

- A. Funds provided to the Municipal Jurisdiction under this Agreement shall be used solely for activities undertaken to fulfill the requirements of the Act and to implement the regional work program adopted by the GMPC.
- B. The Municipal Jurisdiction agrees to conduct the appropriate citizen participation activities as required by the Act. Such activities shall include the broad dissemination of proposals and alternatives, opportunity for written comments, public meeting after effective notice, provisions for open discussion, communication programs, information services, and consideration of and response to public comments.

IV. ROLE OF THE GROWTH MANAGEMENT PLANNING COUNCIL

The parties agree that the GMPC shall serve as a joint forum for the review and recommendation of policy matters and state requirements to the legislative authorities of King County and the cities within King County. The parties hereby agree that the GMPC

shall prepare for CTED a periodic progress report that describes accomplishments of the Regional Work Program.

V. RESPONSIBILITIES AND POWERS OF THE MUNICIPAL JURISDICTION

The Municipal Jurisdiction shall have the following responsibilities and powers:

- A. The Municipal Jurisdiction shall prepare and submit through the GMPC to King County for transmittal to CTED a progress report describing the accomplishments of the Municipal Jurisdiction with respect to the Regional Work Program.
- B. The Municipal Jurisdiction shall send representatives to participate actively in technical forums for the purpose of accomplishing the Regional Work Program.
- C. The Municipal Jurisdiction undertaking activities and/or projects with CTED funds distributed under this Agreement retains full civil and criminal liability as though these funds were locally generated.
- D. The Municipal Jurisdiction shall fully comply with the State Environmental Policy Act in connection with any project that has been funded pursuant to this Agreement.
- E. The Municipal Jurisdiction shall exercise its discretion in determining the use of its pass-through funds in a manner consistent with the Act and the Regional Work Program including the Municipal Jurisdiction's local policies.
- F. The Municipal Jurisdiction shall maintain accounts and records, including personnel, property, financial, and programmatic records, and other such records to ensure proper accounting for all project funds and compliance with this Agreement. All such records shall sufficiently and properly reflect all direct and indirect costs of any nature expended and services provided in the performance of this Agreement. These records shall be maintained as required by law.

VI. RESPONSIBILITIES AND POWERS OF KING COUNTY

King County, by and through its employees, agents, and representatives, agrees to:

- A. Prepare and present to CTED the periodic progress report regarding the implementation of the Regional Work Program as required by CTED pursuant to the Act.
- B. Prepare reports, organize meetings and technical forums/work groups as needed for the GMPC to assist in the implementation of the Regional Work Program.

- C. Distribute to the Municipal Jurisdiction the share of funds to which the Municipal Jurisdiction is entitled according to Section II hereof, within thirty (30) days after the County's receipt of such funds from CTED.

VII. GENERAL TERMS

- A. Funds distribution will be in accordance with CTED fund distribution schedules. The parties acknowledge, however, that commitments to accomplish the Regional Work Program do not terminate with this Agreement.
- B. It is recognized that amendments to this Agreement may become necessary, and any such amendment shall be effective only when the parties have executed a written amendment to this Agreement.

VIII. EVALUATION AND MONITORING

- A. The records and documents with respect to all matters covered by this Agreement during each annual grant period shall be subject to inspection, review, or audit by King County as authorized or as requested by CTED during the applicable records retention period specified by or pursuant to law.
- B. The Municipal Jurisdiction agrees to cooperate with any monitoring or evaluation activities conducted by King County that pertain to the subject of this Agreement. The Municipal Jurisdiction agrees to allow King County, CTED, the State Auditor, and/or any of their employees, agents, or representatives to have full access to and the right to examine during normal business hours and as often as King County, CTED or the State Auditor may deem necessary, all of the Municipal Jurisdiction's records with respect to all matters covered by this Agreement. Any of the employees, agents, or representatives of King County, CTED or the State Auditor shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all invoices, materials, payrolls, and record of matters covered by this Agreement. King County will give advance notice to the Municipal Jurisdiction in the case of fiscal audits to be conducted.
- C. The results and records of said evaluation shall be maintained and disclosed in accordance with RCW Chapter 42.17.

IX. HOLD HARMLESS

- A. Except for the King County obligation under Section VI.C hereof, King County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes to or on behalf of the Municipal Jurisdiction, its employees, or others by reason of this Agreement. The Municipal Jurisdiction shall protect, indemnify and save harmless King County, its officers, agents, and employees from and

against any and all claims, costs, and losses whatsoever occurring or resulting from (1) the Municipal Jurisdiction's failure to pay any such compensation, wages, benefits, or taxes; and (2) the supplying to the Municipal Jurisdiction of work, services, materials, or supplies by municipal employees or others in connection with or in support of the performance of this Agreement.

- B. The Municipal Jurisdiction further agrees that it is financially responsible for and shall repay King County, after an audit, all funds that are received by the Municipal Jurisdiction pursuant to the Agreement that are ultimately determined to have been improperly or illegally expended due to the negligence, intentional acts or failure for any reason to comply with the terms of this Agreement by the Municipal Jurisdiction, or any of its officers, employees, agents, or representatives. This duty to repay King County shall not be diminished or extinguished by the prior termination of this Agreement pursuant to Section VII, Section X or Section XI.
- C. The Municipal Jurisdiction shall protect, defend, indemnify, and save harmless King County and the State of Washington, their officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from any negligent act or omission of the Municipal Jurisdiction, or any of its officers, employees, or agents with respect to this Agreement or its implementation by the Municipal Jurisdiction.

King County shall protect, defend, indemnify, and save harmless the Municipal Jurisdiction, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from any negligent act or omission of King County, or any of its officers, employees, or agents with respect to this Agreement or its implementation by King County.

Claims shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, or otherwise results in unfair trade practice.

- D. The Municipal Jurisdiction shall provide King County with evidence of general liability insurance with limits of no less than \$1 million per occurrence to provide coverage for claims for injuries to persons or damages to property that may arise from, or in connection with the performance of work hereunder by the Municipal Jurisdiction, or any of its agents, representatives, or employees. If the Municipal Jurisdiction is self-insured for this requirement, a certification of self-insurance shall constitute compliance with this section.

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X. TERMINATION

- A. If at any time during the term of this Agreement, either (1) the State of Washington terminates King County's CTED grant status, or otherwise acts to terminate, reduce, modify, or withhold its grant funding to King County, or (2) any necessary appropriations of funds for the Municipal Jurisdiction are not made to King County by the State of Washington, or are revoked or withheld, then King County may terminate this Agreement by giving twenty (20) days' prior written notice of such termination to the Municipal Jurisdiction. The parties acknowledge that, except as otherwise specifically provided for herein, King County shall in no event be responsible for the payment of any funds to the Municipal Jurisdiction. King County, as the official fiscal agent, shall have the authority and responsibility to ensure that upon termination of this Agreement, any remaining CTED funds are made available in accordance with state regulations and the distribution formula agreed to by the GMPC, or returned to CTED.
- B. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Agreement or law that either party may have in the event that any of the obligations, terms, and conditions set forth in this Agreement are breached by the other party.

XI. REDUCTION OF FUNDS

In the event that there is a reduction of funds by the State of Washington or CTED, and if such funds are the basis for this Agreement, then, subject to the notice requirements of Section X hereof, King County may unilaterally terminate all or part of this Agreement, or King County and the Municipal Jurisdiction may reduce their respective scopes of work or budgets under this Agreement.

XII. SEVERABILITY

In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement which can be given effect without the invalid term, condition or application. To this end the terms and conditions of this Agreement are declared severable.

XIII. RECAPTURE PROVISION

- A. In the event that CTED elects to recapture funds from either King County or the Municipal Jurisdiction for failure to expend grant funds in accordance with state law and/or the provisions of this Agreement, King County reserves the right to recapture such funds on behalf of CTED in an amount equivalent to the extent of noncompliance by the Municipal Jurisdiction.

- B. Such right of recapture shall exist for a period not to exceed three (3) years following termination of this Agreement. Repayment by the Municipal Jurisdiction of such funds under this recapture provision shall occur within thirty (30) days after a final determination that such funds must be repaid. Funds recaptured by King County shall be returned to CTED. In the event that King County is required to institute legal proceedings to enforce the recapture provision, or is required to participate in legal proceedings as a result of the Municipal Jurisdiction's noncompliance with the provisions of this Agreement, or is required to reimburse the State of Washington for the cost of legal proceedings, and King County is the prevailing party in such proceedings, then King County shall be entitled to reimbursement of its costs from the Municipal Jurisdiction, including reasonable attorney's fees. In the event King County is not the prevailing party in such proceedings, King County shall reimburse the costs incurred by the Municipal Jurisdiction in connection with such proceedings including but not limited to its attorneys' fees and costs, which fees shall be computed on the basis of those of a private attorney in downtown Seattle who practices in a firm having as many attorneys as are employed in the Seattle City Attorney's Office, and who has experience comparable to the City's attorney.

XIV. NONDISCRIMINATION

There shall be no discrimination against any employee or independent contractor paid by any funds which are the subject of this Agreement or against any applicant for such employment because of race, religion, color, sex, age, sexual orientation, handicap, or national origin. This provision shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training.

The Municipal Jurisdiction and any independent contractor paid by funds that are the subject of this Agreement shall comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended in connection with any project that has been funded pursuant to this Agreement.

XV. RIGHTS OF OTHER PARTIES

It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and conveys no right to any other party.

XVI. GOVERNING LAW AND FILING

This Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of Washington. This Agreement shall be filed with the city clerk of the Municipal Jurisdiction, the King County Records and Elections Division, and the State of Washington Department of

Community, Trade and Economic Development and the Washington State Secretary of State.

XVII. ADMINISTRATION

A. King County's representative shall be: _____

Address: _____

Phone: _____

B. The City of Seattle's representative shall be:

Address: _____

Phone: _____

XVIII. ENTIRE AGREEMENT/WAIVER OF DEFAULT

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the Agreement shall not be deemed to be waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by King County, which shall be attached to the original Agreement.

KING COUNTY, WASHINGTON

THE CITY OF SEATTLE

King County Executive

Signature of Designated Official

Official Title

107834

APPROVED AS TO FORM ONLY:

(Signature)
King County Prosecuting Attorney