



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

Ordinance 18978

Proposed No. 2019-0289.2

Sponsors Upthegrove and McDermott

1 AN ORDINANCE authorizing the use of an interlocal
2 agreement template for cities, towns and metropolitan park
3 districts for open space acquisition projects.

4 **STATEMENT OF FACTS:**

- 5 1. King County conservation futures tax levy proceeds are collected from
6 throughout King County as a dedicated portion of property taxes, for the
7 acquisition of open space and natural resource lands.
- 8 2. Ordinance 14714 established procedures for the annual allocation of
9 conservation futures tax levy proceeds, which directs the conservation
10 futures citizens committee to make funding recommendations to the King
11 County executive, to consider for inclusion in the annual budget
12 ordinance.
- 13 3. Starting in 1990 and through 2017, the King County executive, as
14 authorized by the council, executed interlocal cooperation agreements
15 with the cities of Auburn, Bellevue, Black Diamond, Bothell, Burien,
16 Carnation, Covington, Des Moines, Duvall, Enumclaw, Federal Way,
17 Issaquah, Kenmore, Kent, Kirkland, Lake Forest Park, Mercer Island,
18 Milton, Newcastle, Normandy Park, North Bend, Pacific, Redmond,
19 Renton, Sammamish, Seattle, Shoreline, Snoqualmie and Tukwila, and

20 Vashon Park District.

21 4. Many of the existing interlocal agreements were amended over time to
22 add new projects. Prior to the passage of Ordinance 18827 in November
23 2018, after the council appropriated moneys for projects for entities with
24 which the county already has interlocal agreements, the executive
25 transmitted a proposed ordinance for approval of amendments to the
26 interlocal agreement with each entity to contractually recognize the
27 moneys already appropriated by attaching a funding allocation amendment
28 for affected entities.

29 5. On November 13, 2018, the council passed Ordinance 18827, which
30 authorized the executive to execute follow-on amendments using a
31 template amendment attached to the ordinance.

32 6. The 2019-2020 budget ordinance appropriated twenty-four million
33 dollars for bond funding. Use of bond proceeds requires revisions to the
34 existing interlocal agreements.

35 7. Additionally, some sections of the existing interlocal agreement should
36 be revised for consistency with the King County Code and for technical
37 updates.

38 8. A new template for the interlocal agreement would meet the needs for
39 revised terms and allow for streamlined implementation because the
40 council would have already approved the contractual terms for new
41 projects. The existing interlocal agreements can remain in place for the
42 projects to which they apply.

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BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The executive is hereby authorized to execute interlocal agreements with the cities, towns and metropolitan park districts that receive conservation futures tax proceeds, in substantially the form of Attachment A to this ordinance.

Ordinance 18978 was introduced on 7/1/2019 and hearing held/closed and passed by the Metropolitan King County Council on 9/11/2019, by the following vote:

Yes: 9 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn, Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles and Ms. Balducci



KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Rod Dembowski, Chair

ATTEST:

Melani Pedroza, Clerk of the Council

RECEIVED
2019 SEP 19 PM 3:45
CLERK
KING COUNTY COUNCIL

APPROVED this 18 day of SEPTEMBER, 2019

Dow Constantine, County Executive

Attachments: A. Interlocal Cooperation Agreement Between King County and the City of [City Name] for Conservation Futures Funded Open Space Acquisition Projects, dated August 13, 2019

1 **INTERLOCAL COOPERATION AGREEMENT**
2 **BETWEEN KING COUNTY AND THE CITY OF [CITY NAME]**
3 **FOR CONSERVATION FUTURES-FUNDED**
4 **OPEN SPACE ACQUISITION PROJECTS**
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7 THIS INTERLOCAL COOPERATION AGREEMENT is a grant agreement
8 entered into between the CITY OF [CITY NAME] (“City”) and KING COUNTY
9 (“County”).

10 Article I. Recitals

11 On February 27, 1989, the King County Council passed Ordinance 8867, which
12 established a process to allocate the proceeds of the Conservation Futures Fund.

13 On September 21, 1989, the King County Council passed Ordinance 9128, which
14 established a Conservation Futures Levy Fund to provide for the receipt and
15 disbursement of Conservation Futures tax levy proceeds and established conditions for
16 use of the Fund, including conditions covering allowable cost and expenses.

17 On July 21, 2003, the King County Council passed Ordinance 14714, authorizing
18 funding allocation procedures for King County Conservation Futures tax levy collections
19 and amending Ordinance 8867, Section 2, as amended.

20 The Conservation Futures Advisory Committee has recommended an allocation
21 of Conservation Futures proceeds to specific projects from the Conservation Futures
22 Levy Fund following notification to the cities that proceeds were available, provision of
23 an opportunity for the cities to respond and receipt by the committee of requests for
24 funding, all pursuant to Ordinance 8867, as amended by Ordinance 14714.

25 Starting in 1990 and through 2017, the King County Executive, as authorized by
26 the King County Council, executed Interlocal Cooperation Agreements with the cities of
27 Auburn, Bellevue, Black Diamond, Bothell, Burien, Carnation, Covington, Des Moines,
28 Duvall, Enumclaw, Federal Way, Issaquah, Kenmore, Kent, Kirkland, Lake Forest Park,
29 Mercer Island, Milton, Newcastle, Normandy Park, North Bend, Pacific, Redmond,
30 Renton, Sammamish, Seattle, Shoreline, Snoqualmie and Tukwila, and Vashon Park
31 District. Many of these agreements were amended over time to add new projects.

32 The existing Interlocal Cooperation Agreements remain in place with an
33 indefinite term for the projects for which Conservation Futures proceeds were disbursed.
34 The agreements require the properties to be maintained as open space in perpetuity.

35 The King County Council, by Ordinance _____, has approved a new
36 Interlocal Cooperation Agreement for future projects in order to add terms for the use of
37 bond proceeds for certain projects, achieve consistency between the agreement and the
38 King County Code, and make other technical changes.

39 Pursuant to chapter 39.34 RCW, the parties agree to the following:

40 Article II. Definitions

41 1. Open Space

42 The term “open space” or “open space land” means: (a) any land area so
43 designated by an official comprehensive land use plan adopted by any city or county and
44 zoned accordingly; or (b) any land area, the preservation of which in its present use
45 would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or
46 water supply, or (iii) promote conservation of soils, wetlands, beaches or tidal marshes,

47 or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife
48 reserves, natural reservations or sanctuaries or other open space, or (v) enhance
49 recreational activities, or (vi) preserve historic sites, or (vii) preserve visual quality along
50 highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state
51 tracts of land of not less than one acre situated in an urban area and open to public use on
52 such conditions as may be reasonably required by the legislative body granting the open
53 space classification, or (c) any land meeting the definition of farms and agricultural
54 conservation under subsection (8) of RCW 84.34.020. As a condition of granting open
55 space classification, the legislative body may not require public access on land classified
56 under (b) (iii) of this subsection for the purpose of promoting conservation of wetlands.

57 2. Project

58 The term “Project” means the specific projects described in Exhibit A or
59 added by follow-on amendments to disburse proceeds pursuant to Section 8.2 of this
60 agreement.

61 3. Conservation Futures

62 The term “Conservation Futures” means developmental rights which may
63 be acquired by purchase, gift, grant, bequest, devise, lease or otherwise, except by
64 eminent domain, and may consist of fee simple or any lesser interest, development right,
65 easement, covenant, or other contractual right necessary to protect, preserve, maintain,
66 improve restore, limit future use of, or otherwise conserve open space land, all in
67 accordance with chapter 84.34 RCW and K.C.C. chapter 26.12.

68 Article III. Purpose of the Agreement

69 The purpose of this agreement is to create a cooperative arrangement between the
70 City and the County relating to the Project and to define the terms and conditions
71 governing both parties' obligations created by this agreement.

72 Article IV. Term of Agreement

73 This agreement shall be continued in full force and effect and binding upon the
74 parties hereto upon execution of the agreement by both parties. The terms of the
75 agreement shall be indefinite. The agreement will be terminated if the City is unable or
76 unwilling: 1) to expend the proceeds provided through this agreement; 2) to satisfy the
77 matching requirements contained in this agreement; and 3) upon reimbursement by the
78 City to the County of all unexpended proceeds provided by the County pursuant to this
79 agreement in the manner and amounts described below and payment of all amounts due
80 pursuant to Section 8.1.

81 Article V. Conditions of Agreement

82 Section 5.1 -- Project Descriptions. Proceeds available pursuant to this agreement
83 may be used only for the Projects listed in Exhibit A, such substituted Projects as may be
84 approved by the County as set forth below, or Projects added by follow-on amendments
85 to disburse proceeds pursuant to Section 8.2 of this agreement. All County funded
86 Projects must meet open space criteria as described in chapter 84.34 RCW and K.C.C.
87 chapter 26.12.

88 Section 5.2 -- Use of Proceeds. Proceeds provided to the City pursuant to this
89 agreement as well as moneys provided by the City as match pursuant to this agreement
90 may be used only to pay capital costs related to property acquisition. Those costs include

91 appraisals, title searches, negotiations, administrative overhead, and the cost of actual
92 acquisition or purchase options, and all other costs meeting the requirements of K.C.C.
93 26.12.010. The City shall have the property valued by an appraisal performed by an
94 independent state-certified real estate appraiser with a current general real estate
95 appraiser license, and reviewed by an independent state-certified general real estate
96 appraiser. In requesting reimbursement of proceeds for the Project, the City shall
97 demonstrate to the County compliance with this Section 5.2. Proceeds utilized pursuant
98 to this agreement may not be used to purchase land obtained through the exercise of
99 eminent domain.

100 Section 5.3 -- Completion/Substitution/Deletion of Projects. The City shall
101 complete the Project described in Section 5.1 of this Agreement within a two year period
102 from the effective date of the County ordinance appropriating funding for the Project. If
103 the City does not meet this two year requirement, unless the City demonstrates to the
104 Advisory Committee a compelling reason for continuance of CFT funding for the Project
105 beyond the two-year limit or a reprogramming request is timely approved as provided for
106 below, the County shall be released from any obligation to fund the Project, and the
107 County in its sole discretion may reallocate such proceeds for other projects in other
108 jurisdictions. The City may submit specific requests for project reprogramming to the
109 County for its approval within the two year period. All projects proposed for
110 reprogramming must meet open space criteria as described in chapter 84.34 RCW and
111 K.C.C. chapter 26.12, be submitted for recommendation by the County's Advisory
112 Committee or its successor, and be approved by action of the King County Council. All

113 reprogramming requests shall be submitted to the County's Department of Natural
114 Resources and Parks, Open Space Acquisitions Unit, or its successor.

115 Section 5.4 -- Eminent Domain. If any Project requires the exercise of eminent
116 domain to acquire the property, all proceeds provided pursuant to this agreement plus
117 accrued interest on such proceeds shall be reprogrammed as provided in this agreement
118 or repaid to the County.

119 Article VI. Responsibilities of the City

120 Section 6.1 -- Matching Requirements. Except for acquisitions of property
121 interests in opportunity areas, as defined by K.C.C. 26.12.003, any Project funded by
122 Conservation Futures Levy proceeds shall be supported by the City in which the Project
123 is located with a matching contribution, which is no less than the amount of Conservation
124 Futures Levy proceeds allocated to the Project. This contribution may be in the form of
125 cash, land match with a valuation verified by an appraisal by an independent state-
126 certified real estate appraiser with a current general real estate appraiser license, or the
127 cash value, excluding King County conservation futures contributions, of other open
128 spaces acquired within the previous two years from the date of submittal of the
129 application by the City. The appraisal, to be reviewed, shall have been performed within
130 two years of the application deadline set for the annual allocation of conservation futures
131 tax levy proceeds under which the Property received funding. Properties considered as
132 land match or cash value of other open space acquisitions should be directly linked to the
133 property under application. Any City match, other than cash, shall require County

134 approval. County approval and County acceptance of the City's match will be
135 transmitted in writing to the City by the County's Designated Representative.

136 Section 6.2 -- Reporting. All proceeds received pursuant to this agreement and
137 accrued interest therefrom will be accounted for separately from all other City moneys,
138 accounts and moneys. Until the property described in the Project is acquired and all
139 proceeds provided pursuant to this agreement have been expended, the City shall provide
140 the reports required by K.C.C. 26.12.035.

141 Section 6.3 -- Disposition of Remaining Proceeds. If the City does not expend all
142 proceeds obligated to be provided through this agreement and no substitute project is
143 requested or approved as to the excess proceeds, such proceeds, if held by the City, shall
144 be refunded to the County. For purposes of this section, "proceeds" shall include all
145 moneys obligated to be provided by the County plus interest accrued by the City on such
146 moneys. Any proceeds in excess of those required to be provided by the County for the
147 actual costs of the Project shall remain with the County for use in its sole discretion.

148 Section 6.4 -- Maintenance in Perpetuity. Except as provided in this Section
149 6.4, the City, and any successor in interest, agree to maintain properties acquired with
150 proceeds provided pursuant to this agreement as open space in perpetuity and, as required
151 by the County, to include in the real property records notice of this restriction. Projects
152 carried out by the City in whole or in part with funds provided for under the terms of this
153 agreement shall not be transferred or conveyed except by agreement with an agency or
154 nonprofit organization as defined in K.C.C. 26.12.003, which shall provide that the land

155 or interest in land shall be continued to be used for the purposes of K.C.C. chapter 26.12,
156 and in strict conformance with the uses authorized under chapter 84.34 RCW.

157 The City shall not change the status or use of properties acquired with proceeds
158 provided pursuant to this agreement unless the City provides equivalent lands or cash in
159 exchange for the land to be changed to a different use. The land shall be valued in its
160 changed status or use, and not based upon its value as open space, and the replacement
161 land or payment amount must be approved by the County. If requested by the County, at
162 its own cost the City will provide the County an appraisal performed within the previous
163 year by an independent state-certified real estate appraiser with a current general real
164 estate appraiser license. The value established by the appraisal will not be binding on the
165 County. If the County approves replacement land, the City shall complete the
166 replacement within one year of approval. If the County approves cash reimbursement,
167 the City shall pay the County within 90 days of approval.

168 Section 6.5 – Tax Covenants. The City acknowledges that proceeds provided by
169 the County for a Project may be proceeds of tax-exempt bonds (the “Bonds”) subject to
170 certain requirements of the Internal Revenue Code of 1986, as amended (the “Tax
171 Code”), including any implementing regulations and any administrative or judicial
172 interpretations. The City will comply with Tax Code requirements, including those set
173 forth in Exhibit B, which is incorporated herein, applicable to Bond-financed Projects
174 identified in Exhibit A, which is incorporated herein, as well as Bond-financed Projects
175 identified in subsequent amendments to this agreement.

176 Article VII. Responsibilities of the County

177 Subject to the terms of this agreement, the County will provide Conservation
178 Futures Tax Levy proceeds in the amounts and for the Projects identified in Exhibit A as
179 well as in those amounts and for those Projects identified in subsequent amendments to
180 this agreement. The City may request additional proceeds; however, the County has no
181 obligation to provide proceeds to the City in excess of the amount shown in Exhibit A.
182 The County assumes no obligation for future support of the Project described herein
183 except as expressly set forth in this agreement.

184 Article VIII. Other Provisions

185 Section 8.1 -- Hold Harmless and Indemnification.

186 A. The County assumes no responsibility for the payment of any
187 compensation, fees, wages, benefits or taxes to or on behalf of the City, its employees,
188 contractors or others by reason of this agreement. The City shall protect, indemnify and
189 save harmless the County, its officers, agents and employees from any and all claims,
190 cost and whatsoever occurring or resulting from: 1) the City's failure to pay any
191 compensation, fees, wages, benefits or taxes; and 2) the supplying to the City of works
192 services, materials or supplies by City employees or agents or other contractors or
193 suppliers in connection with or in support of performance of this agreement.

194 B. The City further agrees that it is financially responsible for and will repay
195 the County all indicated amounts following an audit exception, which occurs due to the
196 negligent or intentional acts of this agreement by the City, its officer, employees, agent or
197 representatives arising out of the performance of the terms of this agreement.

198 C. The City shall protect, indemnify and save harmless the County from any
199 and all costs, claims, judgments, or awards of damages, arising out of or in any way
200 resulting from the negligent acts or omissions of the City, its officers, employees or
201 agents in the performance of its obligations under the terms of this agreement. For the
202 purposes of this agreement only, the City agrees to waive the immunity granted it for
203 industrial insurance claims pursuant to Title 51 RCW to the extent necessary to extend its
204 obligations under this paragraph to any claim, demand, or cause of action brought by or
205 on behalf of any employee, including judgments, awards and costs arising therefrom
206 including attorney's fees.

207 D. To the extent permitted by law, and except to the extent caused by the sole
208 negligence of the County, the City agrees, at its expense, to pay, and to indemnify and
209 hold the County, its officers, employees or agents harmless of, from and against, any and
210 all claims, damages, demands, losses, liens, liabilities, penalties, fines, taxes, lawsuits and
211 other proceedings and costs and expenses (including attorneys' fees) of every
212 conceivable kind, character or nature whatsoever, arising directly or indirectly from or
213 out of, or in any way connected with any examination or audit of any Bond issued to
214 finance or refinance costs of any Bond-financed Project identified in Exhibit A as well as
215 Bond-financed Projects identified in subsequent amendments to this agreement by the
216 Internal Revenue Service, or any determination by the Internal Revenue Service or a
217 court of competent jurisdiction that the interest on any such Bond is or should be subject
218 to federal income taxation; provided, however, that the City shall not be liable for any
219 payment made by the County with respect to any settlement of any such examination or

220 audit, or of any other proceeding related thereto, entered into without the consent of the
221 City.

222 Section 8.2 -- Amendment. The parties reserve the right to amend or modify this
223 agreement. Amendments or modifications to disburse proceeds approved by the County
224 Council must be by written instrument signed by the parties substantially in the form of
225 Exhibit C. Other amendments also must be approved by the respective City and County
226 Councils.

227 Section 8.3 -- Contract Waiver. No waiver by either party of any term or
228 condition of this agreement shall be deemed or construed to be a waiver of any other term
229 or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any
230 subsequent breach whether of the same or different provision of this agreement. No
231 waiver shall be effective unless made in writing.

232 Section 8.4 -- Entirety. This agreement is the complete expression of the terms
233 hereto and any oral representations or understandings not incorporated are excluded.
234 This agreement merges and supersedes all prior negotiations, representations and
235 agreements between the parties relating to the Project and constitutes the entire
236 agreement between the parties. The parties recognize that time is of the essence in the
237 performance of the provisions of this agreement.

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

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KING COUNTY

Dow Constantine
King County Executive

Date: _____
Acting under the authority of
Ordinance _____

Approved as to form:

Dan Satterberg
King County Prosecuting Attorney

CITY OF [CITY NAME]

[NAME]
Mayor

Date: _____
Acting under the authority of
Ordinance _____

Approved as to form:

City Attorney

EXHIBIT A

**[YEAR] CONSERVATION FUTURES LEVY
CITY OF [CITY NAME] ALLOCATION**

Jurisdiction	Project	Allocation
[City Name]	[Project Name]	[Amount]
TOTAL		[Amount]

Project Description:

[Project Number] [City Name] – [Project Name]
[Project Description used in legislation approving proceeds]

Is this a Bond-financed Project?

EXHIBIT B

Tax Covenants

The City acknowledges that proceeds provided by the County for the Project may be proceeds of Bonds subject to certain requirements of the Tax Code. The City will take all actions with respect to the Project, and proceeds received for the Project, necessary to assure the exclusion of interest on the Bonds from the gross income of the owners of the Bonds, including but not limited to the following:

(a) Expenditure of Proceeds. The City will expend proceeds of the Bonds received from the County for capital expenditures for federal income tax purposes within the meaning of Section 1.150-1(b) of the Tax Code. Bond proceeds may be expended to pay, or reimburse the City for, Project capital expenditures or to repay interim indebtedness incurred for capital expenditures of the Project.

(b) Notice. The City will provide notice of action taken or planned to issue any tax-exempt indebtedness, including bonds, bank loans, or other tax-exempt indebtedness, to finance Project costs.

(c) Treatment as Grant.

- (1) The City is a governmental entity possessing substantial taxing, eminent domain and police powers and constituting a political subdivision of the State.
- (2) The City is not acting as an agent of the County.
- (3) The grant of proceeds for the Project does not impose any obligation or condition to directly or indirectly repay any amount to the County (excluding obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer).
- (4) The grant is required to be used for open space as required under Article II but does not impose any conditions relating to the use of the Project or other property of the City by the County or any of its agencies or authorities.
- (5) This agreement is a grant agreement.

(d) Limitations on Disposition of Project. The City will not sell or otherwise dispose of any components of the Project without prior approval by the County and compliance with timeframes for completion of land replacement or cash reimbursement as provided in Section 6.4.

(e) Record Retention. The City will retain its records of all accounting and monitoring it carries out with respect to the Bond proceeds received and with respect to

the Project for at least three years after the Bonds mature or are redeemed as provided in the amendment granting such Bond proceeds to the City.

(f) Cooperation. The City will provide tax certificates when and as requested by the County or County's bond counsel in order to establish or maintain the tax-exempt status of the Bonds. The City will cooperate in any audit of the Bonds by the Internal Revenue Service, including disclosure of any record, contracts and other materials relating to the Bond proceeds received by the City and the Project.

EXHIBIT C

**AMENDMENT TO THE CONSERVATION FUTURES
INTERLOCAL COOPERATION AGREEMENT
BETWEEN KING COUNTY AND THE CITY OF _____
FOR OPEN SPACE ACQUISITION PROJECTS**

Preamble

The King County Council, through Ordinance 9128, has established a Conservation Futures Levy Fund and appropriated proceeds to King County and certain cities. This amendment is entered into to provide for the allocation of additional proceeds made available for open space acquisition.

THIS AMENDMENT is entered into between the CITY OF _____ and KING COUNTY, and amends and attaches to and is part thereof of the existing Interlocal Cooperation Agreement entered into between the parties on the ____ day of (Month), (Year), as previously amended.

The parties agree to the following amendment:

The Interlocal Cooperation Agreement is hereby amended by adding Exhibit 1, attached hereto.

In all other respects, the terms, conditions, duties and obligations of both parties shall remain the same as agreed to in the Interlocal Cooperation Agreement as previously amended.

Once fully executed, this Amendment shall be incorporated into the existing Interlocal Cooperation Agreement as if fully set forth, and shall become Amendment ____.

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

KING COUNTY

CITY OF _____

Dow Constantine
King County Executive

Mayor

Date: _____

Date: _____

Approved as to form:

Approved as to form:

Dan Satterberg
King County Prosecuting Attorney

City Attorney

EXHIBIT 1

**[YEAR] CONSERVATION FUTURES LEVY PROCEEDS
CITY OF _____ ALLOCATION**

Jurisdiction	Project Name (Project Number)	Allocation
[City Name]	[Project Name] ([Project Number])	\$
TOTAL		\$

Project Description:

[Project Number] [City Name] – [Project Name]
[Project Description used in legislation approving proceeds]

Is this a Bond-financed Project?