

**AN INTERLOCAL AGREEMENT FOR THE IMPLEMENTATION OF A
DEMONSTRATION PROJECT TO TRANSFER DEVELOPMENT RIGHTS
FROM RURAL UNINCORPORATED KING COUNTY TO THE DENNY
TRIANGLE IN DOWNTOWN SEATTLE**

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 Seattle, a municipal corporation of the State of Washington, herein referred to as the “City.”

RECITALS

WHEREAS, the Washington State 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; and

WHEREAS, the GMA requires counties to adopt county-wide 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 in Ordinance 13274 developed a transfer of development credit demonstration program which authorizes incorporated areas to receive development credits transferred from rural and agricultural production district unincorporated areas; and

WHEREAS, the rural and agricultural production district areas in the County are recognized as containing important countywide public benefits such as forestry, 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’s Comprehensive Plan designates the Downtown area as one of five Urban Centers, meeting the criteria in the Countywide Planning Policies; and

WHEREAS, by Seattle Ordinance 119365 the City adopted a neighborhood plan for the Denny Triangle, which is an urban village in the Downtown Urban Center, and has adopted amendments to its Land Use Code permitting the use of development credits from rural King

County to increase development capacity of sites in the Denny Triangle Urban Village under certain conditions; and

WHEREAS, the Denny Triangle Neighborhood plan calls for developing incentives for residential development, and to increase public amenities to improve the pedestrian, transit oriented pattern in the Denny Triangle; and

WHEREAS, the City and the County share an interest in creating an effective, cooperative development credit transfer system to achieve the goals of the GMA, the Countywide Planning Policies, the City and King County Comprehensive Plans, and the Denny Triangle Neighborhood Plan; and

WHEREAS, this shared interest is manifested through an ongoing partnership in which the City takes additional development to preserve rural land and the County invests in receiving area amenities; and

WHEREAS, the County and the City are authorized, pursuant to RCW 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 credits only from rural and agricultural production district unincorporated areas of the County (hereafter referred to as “rural development credits”), as depicted in Exhibit A, to the Denny Triangle Urban Village in the City, as depicted in Exhibit B, according to the provisions described below.

II. RESPONSIBILITIES AND POWERS OF THE CITY OF SEATTLE

A. City Ordinances

The City has adopted Ordinances _____ and _____ to implement the Program, which Ordinances have, among other provisions:

1. designated the Denny Triangle Urban Village as a receiving area to which development credits from the rural unincorporated area may be transferred under this Program;

2. set the appropriate level of additional development that may be permitted on a receiving site for each development credit from a rural sending site;
3. established and modified development standards and provisions for public amenities;
4. established the Denny Triangle Amenity Credit Fund.

B. County Acknowledgment; Modifications

The County acknowledges that the provisions of such Ordinances are consistent with the intent and purposes of the Program. The City may modify the terms and conditions upon which development credits may be used.

C. Report

The City shall jointly with the County, publish every year a report as described in Part V below.

D. Comment on Deed Restrictions

The City may, within 90 days of approval of this agreement by both Councils, review and comment on the standard form of deed restrictions to be obtained by the County on sending sites in or adjacent to the Tolt or Cedar River Watershed Basins.

E. Priority Areas

The City may, jointly with the County, establish as a goal, priority areas for sending sites in rural King County.

F. Purchases

The City may consider the purchase of development credits within the Cedar River Watershed as part of the Habitat Conservation Plan implementation strategies.

G. Notification Process

The City, in consultation with the County, shall develop a process to notify the County when it has accepted the use of rural development credits in a specific project in the Denny Triangle Urban Village. For purposes of this Agreement, "acceptance" occurs at the earlier of (a) issuance by the City's Department of Design, Construction, and Land Use of the first building permit for a project using rural development credits; or (b) a developer's irrevocable commitment to use the rural development credits for a specific project.

III. RESPONSIBILITIES AND POWERS OF KING COUNTY

A. Program Administration

The County shall adopt polices, regulations and administrative procedures to implement the Program, which shall promote and facilitate the purchase and sale of rural development credits. The County shall, at a minimum:

- 1) establish criteria and procedures for the certification of sending sites;
- 2) facilitate and promote certification of sites;
- 3) establish procedures to facilitate the sale of rural development credits;
- 4) seek sites within the Tolt and Cedar Watershed Basins as priority sites for purchase of development credits by the County's TDC Bank;
- 5) establish procedures to require, maintain and enforce deed restrictions on rural unincorporated sending sites from which development credits are bought, in order to prohibit those sites from being developed in violation of the deed restrictions;
- 6) make its best efforts to purchase TDCs from sending sites at the lowest price.

B. Program Evaluation

The County shall, jointly with the City, publish every year a report as described in Part V below.

C. Value of Credits

Within 90 days after this agreement is signed by both parties and proposed King County Ordinance 99-542 is adopted, the County shall make its best efforts to identify and appraise selected sending sites for potential TDC purchase, and provide the City representative price ranges of the value of rural development credits that the County has appraised and/or purchased.

D. Public Amenities

The County shall provide funds to the City for the development of public amenities to increase pedestrian activity, transit use and residential character in the Denny Triangle Urban Village while the TDC Program is effective, according to the provisions in Section IV, Public Amenities Investment, below.

IV. PUBLIC AMENITIES INVESTMENT

A. Initial Investment

Consistent with adopted County appropriations and statutory restrictions, the County shall provide funds as an initial investment in the amount of up to \$500,000 to

the City for the planning and development of public amenities in the form of capital improvements to mitigate a portion of the impacts associated with transferred density and to encourage increased density. The \$500,000 will be disbursed according to Section E below. It is understood that County funding as specified herein will not be adequate to mitigate all such impacts, and that therefore the City's development regulations require mitigation in the form of amenities or contributions to amenities from developers using development credits. After a total of 25 rural development credits have been accepted for use in the Denny Triangle, the level of additional County amenity funding above the \$500,000 authorized, shall be determined by the County in cooperation with the City based on the number and cost of rural development credits accepted for use in permitted projects inside the Denny Triangle Urban Village. Future amenity funding from the County above the \$500,000 authorized in this agreement shall be contingent on appropriations adopted by the Metropolitan King County Council.

B. Eligible Amenities.

The City must spend funds provided by the County for the development of amenities only on the following amenities, provided that City expenditures shall be consistent with statutory restrictions of County funding:

- 1) planning and development of designated Green Streets;
- 2) sidewalk widening, pedestrian and street improvements;
- 3) transit facilities, incentives to use transit, and improved transit service for residents;
- 4) parks, open space acquisition or improvements, gardens, gateways, and recreational and community facilities;
- 5) drainage improvements; and
- 6) public art and street furniture.

C. County Fund Sources; Contracting

The sources of County funding for the initial \$500,000 are authorized in the 1999 Budget, Ordinance 13340, in CIP Projects #RDCW17, Agreement With Other Agencies, and #A00473, Smart Growth Amenities. The initial \$500,000 of King County investment shall only be spent on the development of designated Green Streets and sidewalk widening, pedestrian, transit and street improvements, and the planning for these capital improvement projects.

Unless otherwise required by statutory restrictions on County funds, City contracting procedures will be used for amenity projects.

D. Priority for other Funding

In addition to the provisions under subsection E below for public amenities, the County shall, while the TDC Program is in effect, consider granting priority to amenity projects within the Denny Triangle Urban Village and other TDC receiving areas to

receive funding from Conservation Futures, Youth Sports Grants, Transportation Demand Management and other funds to increase amenities in the area.

E. Funding of Amenities

1. First \$100,000. The County shall provide \$100,000 to the City in 1999, or within 60 days after adoption of this agreement, whichever is later. The City shall use this money to prepare construction plans for the Terry Avenue and 9th Avenue Green Street projects, including cost estimates, design development and construction drawings, to obtain permits for these projects, and, if possible, to start construction on these projects. Prior to distribution of this amenity funding, the City must provide and the County must approve a concept plan and written scope of work describing the elements, estimated schedule, and estimated budget for the work to be accomplished with the funding. The City shall provide sufficient detailed scope and budget information consistent with standard engineering, public finance and auditing practices. The County shall not unreasonably withhold or delay approval of the concept plan and scope of work. Any disapproval by the County shall include a written statement of the grounds for disapproval and the changes deemed necessary by the County. The County shall approve or disapprove a concept plan and scope of work within sixty (60) days of its delivery to the County, or within twenty (20) working days of delivery to the County of revisions after any County disapproval.

2. Next \$400,000. The County shall provide the City the remaining \$400,000 once a minimum of 10 rural development credits have been accepted by the City for use in specific permitted project(s) inside the Denny Triangle Urban Village. These funds shall be used by the City solely for construction of portions of the Terry Avenue and/or 9th Avenue Green Streets, and funding of items described in subsection 1 above. Items identified in a concept plan and scope of work approved by the County under subsection 1 above shall not require any further County approval. Prior to distribution of any of the \$400,000 for any other items, the City must provide and the County must agree to a further concept plan and written scope of work describing the elements, estimated schedule, and estimated budget for the work to be accomplished with the funding. The City shall provide sufficient detailed scope and budget information consistent with standard engineering, public finance and auditing practices. The County shall not unreasonably withhold or delay approval of the concept plan and scope of work. Any disapproval by the County shall include a written statement of the grounds for disapproval and the changes deemed necessary by the County. The County shall approve or disapprove a concept plan and scope of work within sixty (60) days of its delivery to the County, or within twenty (20) working days of delivery to the County of revisions made after any County disapproval. The County shall disburse funds under this subsection 2 within thirty (30) days after the City shall have satisfied all requirements under this subsection 2 for disbursement. The County may make partial disbursement of the

\$400,000 if some, but not all, of the items requested to be funded are included in an approved concept plan and scope of work and all other conditions of this subsection 2 are satisfied.

3. Reports. The City shall report to the County within thirty (30) days after the end of each calendar quarter the number of credits that have been accepted by the City for projects in the Denny Triangle Urban Village, and shall identify the specific projects involved.
4. Future Amenity Funding. Once a total of 25 rural development credits have been accepted for use in the Denny Triangle and subject to available budget authority, the County through the King County Executive, and the City through the Mayor of Seattle, will negotiate in good faith to determine the amount 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 based on the number and approximate value of rural development credits accepted for use inside the Denny Triangle Urban Village. Future amenity funding from the County above the \$500,000 authorized in this agreement shall be contingent on appropriations adopted by the Metropolitan King County Council.
5. Use of Future Amenity Funding.
 - a. Additional funds provided under subsection 4 above shall be expended by the City only for amenities mutually approved by the City and County. The County shall not unreasonably withhold approval of amenities consistent with County statutory restrictions and the City's Comprehensive Plan and the Denny Triangle Neighborhood Plan.
 - b. Prior to distribution of any future amenity funding, the City must provide and the County must approve a concept plan and written scope of work describing the elements, estimated schedule, and estimated budget for the work to be accomplished with the funding. The City shall provide sufficient detailed scope and budget information consistent with standard engineering, public finance and auditing practices. The County shall not unreasonably withhold or delay approval of the concept plan and scope of work. Any disapproval by the County shall include a written statement of the grounds for disapproval and the changes deemed necessary by the County. The County shall approve or disapprove a concept plan and scope of work within sixty (60) days of its delivery to the County, or within twenty (20) working days of delivery to the County of revisions after any County disapproval.

F. Re-use of Convention Place Transit Station

1. The County agrees to include the City, Sound Transit and the Denny Triangle Neighborhood businesses and residents in the development of a coordinated and collaborative process to create a financially feasible pedestrian and transit supportive, high quality design mixed use, public/private joint development project at Convention Place.
2. Development plans for the site shall include a publicly accessible urban plaza linking the station with designated Green Streets. Any future residential development at the Convention Place station authorized by the City should consider use of development credits from rural King County, subject to City development regulations then in effect.

G. Expenditure of Funds

Any project or activity for which funds for amenities are 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 by the City and not yet expended for such costs.

H. Funding is Additional

County funding under this Agreement is in addition to any funding to be provided to the City, or for amenities, under any other agreement, commitment, or program.

V. EVALUATION AND MONITORING

A. Records

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. Joint Report

Jointly the City and County shall publish every year a report evaluating the progress of the Program. The County may use the yearly report to the County Council as part of this evaluation. The evaluation shall include at a minimum an analysis of the following factors:

- 1) the number of sites certified and number and value of credits bought and sold by the TDC Bank and private transactions;
- 2) the County's marketing efforts, ease or difficulty in certification of sites and/or purchasing or selling development credits;
- 3) the effect of deed restrictions in preserving the rural character of sending sites;
- 4) the value and types of amenities in the Denny Triangle Urban Village funded by the County, developers and the City;
- 5) the number of projects using the Program, number of units built, and number of credits used, the ease or difficulty in permitting projects using the Program; and
- 6) the status of the City's amenity fund balance, the status of County investment in amenities and types of improvements made or planned under the Program.

VI. DURATION

A. Duration

This Agreement shall become effective on the date it is signed by all parties and shall continue until July 30, 2005, unless earlier terminated as provided in subsection B below.

B. Termination

Either party may terminate this Agreement upon 180 days' written notice to the other if (1) the City's development regulations allowing the use of rural development credits, or the provisions of the County's development regulations allowing transfer of development credits to cities shall be repealed or held invalid by any court of competent jurisdiction in a final judgment no longer subject to appeal; or (2) the other party shall materially default in the performance of its obligations herein, and shall not cure such default within thirty (30) days' notice after such party's receipt of written notice thereof from the City or County, as the case may be. Any termination of this Agreement shall affect the use of rural development credits previously certified by the County for use in the Denny Triangle Urban Village only to the extent provided in City development regulations, as the same may be amended. Any termination of this Agreement shall not affect the City's or County's rights or duties with respect to funds previously provided by the County under the terms hereof, nor the City's right to receive County funds for which the City shall have satisfied all conditions to disbursement prior to termination.

C. Extension

Pursuant to a mutual written agreement between the parties, this Agreement may be extended for a maximum of three (3) 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.

VII. INDEMNIFICATION

A. County Negligence

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 principle of 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. City Negligence

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 principle 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. Concurrent Negligence

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.

VIII. GENERAL TERMS**A. Administration**

This Agreement shall be administered for the City by the Director of the Strategic Planning Office or his/her designee, and for the County by the Director of the Office of Regional Policy and Planning, or his/her designee.

B. Severability

If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected.

C. No Waiver

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. No Third Party Beneficiary

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. Entire Agreement

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.

In witness whereof, the parties have executed this Agreement as of the ____ day of _____, 1999.

KING COUNTY

By: _____

THE CITY OF SEATTLE

By: _____

Pursuant to Ordinance _____