

RESOLUTION R - 3598

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING AND DIRECTING THE CITY MANAGER TO SIGN AN INTERLOCAL AGREEMENT WITH KING COUNTY REGARDING OPEN SPACE ACQUISITION PROJECTS.

Whereas, the City anticipates receiving proceeds of the "King County Unlimited Tax General Obligation Bonds (Open Space), 1990" for the purpose of acquiring certain open space projects; and

Whereas, the City must execute an Interlocal Cooperation Agreement with King County in order to receive said bond proceeds; now, therefore

Be it resolved by the City Council of the City of Kirkland as follows:

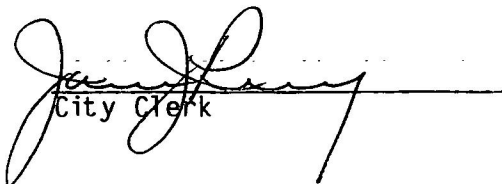
Section 1. The City Manager is hereby authorized and directed to sign on behalf of the City of Kirkland an Interlocal Cooperation Agreement between King County and the City of Kirkland relating to open space acquisition projects substantially similar to that agreement which is attached to the original of this Resolution as Exhibit A.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 3rd day of April, 1990.

Signed in authentication thereof this 3rd day of April, 1990.


MAYOR

ATTEST:


City Clerk

March 6, 1990

INTERLOCAL COOPERATION Agreement
 BETWEEN KING COUNTY AND THE CITY OF KIRKLAND
 OPEN SPACE ACQUISITION PROJECTS

This *Interlocal Cooperation Agreement* is entered into between the City of KIRKLAND ("City") and King County ("County").

Article I. RECITALS

On November 7, 1989, King County voters approved the issuance of Bonds to finance the acquisition, construction, development, and improvement of public green spaces, green belts, open space, parks and trails and an excess property tax levy to pay the principal and interest on such Bonds. The ballot proposition was authorized by King County Ordinance No. 9071.

Projects to be funded from Bond Proceeds include King County Projects, City of Seattle Projects and Suburban Jurisdiction Projects. Prior to the distribution of Bond Proceeds by the County to an eligible jurisdiction, Ordinance No. 9071 requires execution of an Interlocal Cooperation Agreement containing provisions necessary to satisfy applicable federal tax laws and regulations and to make certain other provisions.

Pursuant to King County Ordinance No. 9071, and Washington Statute Chapter 39.34, the parties agree as follows:

Article II. DEFINITIONS.

2.1. Agreement. This Interlocal Cooperation Agreement between the County and the City regarding the distribution of Proceeds from the sale of Bonds for public green spaces, green belts, open space, parks and trails, as described and authorized by Ordinance No. 9071 and the Bond Ordinance.

2.2. Bond Ordinance. The ordinance or ordinances which are adopted by the King County Council authorizing the issuance and sale of Bonds to finance the Projects authorized by Ordinance No. 9071 or subsequently approved by the County.

2.3. Bond Proceeds. The principal proceeds received from the sale of Bonds and any earnings received from the investment thereof. The term shall not include accrued interest on the Bonds paid by the original purchaser of the Bonds.

2.4. Bond Redemption Fund. The County fund designated by ordinance for the purpose of paying the principal of and interest on any Bonds issued by the County.

2.5. Bonds. Any bonds, notes or other evidence of indebtedness sold pursuant to the Bond Ordinance and any refunding bonds issued in lieu thereof.

2.6. Capital Costs. The term "capital costs" shall be construed consistent with the term "capital purposes" in Article VII, S 2(b) of the Washington State Constitution. The term shall not include the replacement of equipment. The term may include payment for all costs related to the carrying out of Projects, including without limitation, real estate appraisal, legal and

acquisition costs; making qualified reimbursements; paying necessary design, engineering, construction and Project administration expenses; staffing costs of the Citizens Oversight Committee; paying interest on any interim financing pending the receipt of Bond Proceeds; and paying the costs and expenses incurred in issuing the Bonds or administering the planning and distribution of Bond Proceeds.

2.7. Citizens Oversight Committee. The Open Space Citizens Advisory Committee, which was established following enactment of the Election Ordinance and passage of the bond proposition authorized therein to review and report to the King County Council on a semi-annual basis regarding the status and implementation of approved Projects. The committee is also responsible for recommending to the King County Council concerning reallocations of Bond Proceeds when available for new or revised Projects.

2.8. Chief Financial Officer. The person serving as chief financial officer of the County's Office of Financial Management or the person's successor.

2.9. Code. The Internal Revenue Code of 1986 as amended, together with all applicable regulations.

2.10. The Election Ordinance. King County Ordinance No. 9071.

2.11. Open Space. The term "open space" or "open space land" means (a) any land area so designated by official comprehensive land use plan and adopted by a 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 and 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 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.

2.12. Project. Projects for acquisition, construction, development and improvement of public green spaces, green belts, open space, parks and trails as authorized in the Election Ordinance or as subsequently approved by King County.

2.13. Project Categories. Projects allocated within one of three existing categories authorized in the Election Ordinance. The categories include County Projects, Seattle Projects and suburban jurisdiction Projects.

2.14. Qualified Reimbursements. Reimbursements of advances for Project costs made after the enactment of the Election Ordinance from other funds in anticipation of the receipt of Bond Proceeds as evidenced by written records made contemporaneously with such advances and in a form acceptable to the Chief Financial Officer.

2.15. Taxable Bonds. Bonds the interest on which is included in the gross income of recipients thereof by reason of the failure to comply with applicable requirements of the Code.

2.16. Tax Exempt Bonds. Bonds the interest on which is not included in the gross income of the recipients thereof by reason of section 103(a) of the Code of 1986 as amended.

Article III. TERM OF AGREEMENT.

This Agreement shall be effective when executed by both parties and shall remain in effect for twenty (20) years following the date of issuance of Bonds for the Projects, or the term of said Bonds, whichever is longer, unless terminated earlier pursuant to this Agreement.

Article IV. CONDITIONS OF AGREEMENT.

Section 4.1. Project Description/Use of Bond Proceeds.

Bond Proceeds made available to the City pursuant to this Agreement may be used to defray the Capital Costs of Projects pursuant to the Election Ordinance and this Agreement. The Projects currently approved by the County are listed in Attachment A, which is incorporated herein by reference.

Section 4.3. Project Implementation. Project

implementation shall be as set forth in Attachment B, which is incorporated herein by reference or as set forth in approved modifications to the implementation schedule set forth in Attachment B. The parties recognize that delay in implementation

of Projects will jeopardize the financial viability of the Projects as currently approved and the tax exempt status of interest on the Bonds. The City, therefore, certifies that as to its Projects, it has reviewed its real property acquisition procedures, commits to all reasonable action and will proceed with due diligence to ensure that its Projects are expeditiously completed in accordance with the Project Implementation schedule, and that it will give highest priority to those properties where there is a particular threat of conversion to a more intensive use or increases in acquisition costs.

Section 4.3. Maintenance in Perpetuity. The City and any successor in interest, agree to maintain the lands and facilities constituting the Projects acquired with Bond Proceeds provided pursuant to this Agreement, the Election Ordinance and the Bond Ordinance for the purposes set forth herein in perpetuity. If the City changes the status or use of lands or facilities acquired with Bond Proceeds pursuant to this Agreement to any other purpose or use, the City shall pay the County an amount acceptable to the County in cash to provide for replacement of the open space land or facilities 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 public green space, green belt, open space, park or trail. In no event shall the use of any land or facilities

constituting a Project be changed to any private use, which would jeopardize the tax exempt status of the interest on the Bonds.

At its own cost, the City will provide the County an independent MIA appraisal prepared 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 ninety (90) days of such notification. Reimbursement not received within ninety days will accrue interest at the then legal rate from the date of notification.

Should any Project or portion thereof be subject to condemnation during the term of this Agreement, the proceeds of any award in condemnation of the Project or portion thereof shall be used for the acquisition, construction, development or improvement of other equivalent lands or facilities. The procedure for submission to and approval by the County of the City's proposed substituted lands and facilities shall be as set forth in Section 5.5.

Nothing herein shall prevent the City from granting easements, franchises or concessions or from making joint use agreements or other operational agreements which are compatible with the use of a Project for the purposes authorized in this Agreement and the Ordinance.

4.4. Project Administration and Maintenance. Necessary administration and maintenance for a Project after its completion shall be the responsibility of the jurisdiction in which the

Project was located on July 1, 1989. If the Project is located within an area annexed by the City after July 1, 1989, ownership, administration and maintenance of the Project will be transferred to the City if so authorized by the County. Following such transfer, all provisions of this Agreement and the Election Ordinance applicable to City administration, maintenance and use of Projects shall apply.

4.5. Special Conditions. As set forth in the Election Ordinance, the Agreement between the County and the City may contain special conditions. If applicable, such special conditions are attached hereto as Attachment C and incorporated herein by reference.

4.6. Joint Projects. If any of the City's Projects are joint Projects with the County, in addition to any other applicable requirements or special conditions, the parties shall negotiate an agreement regarding administration and Project management of such joint Projects prior to distribution of Bond Proceeds to the City for such joint Projects.

Article V. BOND PROCEEDS.

5.1. Distribution of Principal Proceeds. The principal proceeds of the Bonds shall be deposited in a fund or funds to be designated by the County for the purpose of administering, disbursing and accounting for Bond Proceeds authorized by the Election Ordinance, this Agreement and the Bond Ordinance. Within said fund or funds, Bond principal will be distributed to

the City in accordance with the schedule attached hereto as Attachment A.

5.2. Investment of Bond Proceeds. The County, through its Office of Financial Management, shall be responsible for placing investments of cash balances. The County will be responsible for arbitrage calculations and related actions required by the Code to ensure compliance with arbitrage regulations. The City shall maintain complete and accurate records of all expenditures and any investment of Bond Proceeds by the City and shall provide all information requested by the County to assure such compliance.

5.3. Distribution of Interest Earnings. Interest earnings on the principal Bond Proceeds will be distributed to the City on a periodic basis, and will be calculated based on the unspent balance of all City Projects. The County will allocate such interest earnings to specific City Projects according to the City's instructions. Interest earnings available for distribution will be reduced as necessary to provide for any rebate payments required by the Code due to arbitrage earnings on bond Proceeds. Any interest earnings withheld in excess of required rebate payments will be distributed to the City pro-rata, based on the City's share of all interest earnings received on Bond Proceeds.

5.4. Bond Proceeds Disbursement.

Bond Proceeds will be disbursed to the City upon receipt and verification by the Open Spaces Office of properly completed requests for payment of Bond Proceeds. The Office of Financial

Management shall prescribe the form of such requests. The disbursement requests shall be made only for Qualified Reimbursements to the City for Capital Costs, for current City expenditures for Capital Costs and for payment of interim financing pursuant to section 5.6. The City shall transmit payment to its payees for current Capital Costs expenditures within five days of receipt by the City of its requested Bond Proceeds. The City shall provide a list of authorized individuals to certify the requests submitted to the County. The City will be responsible for the accuracy of the payment requests and the propriety and timeliness of its disbursements following receipt of Bond Proceeds.

5.5. Bond Proceeds Reallocation.

a. Excess Bond Proceeds - Existing Projects.

If, upon completion of a Project, Bond Proceeds exist in excess of the amount necessary to fully provide for the Project, the City may propose to allocate such excess Bond Proceeds to other existing Projects by providing the County and the Citizens Oversight Committee notice of its intention to reallocate such Bond Proceeds and by submitting with such notice a revised implementation schedule reflecting such proposed reallocation. The Citizens Oversight Committee shall have 21 days to review and recommend approval or disapproval of the City's proposed reallocation. The City's proposal and the Citizens' Oversight Committed recommendation will be submitted to the King County Council for determination.

(b) Bond Proceeds Reallocation - Project Abandonment.

If the City abandons a Project, the City may reallocate unexpended Bond Proceeds to other existing approved City Projects following the same procedure as set forth in sub-section 5.5(a) above after formal legislative action by the City, which includes a determination and findings that changed conditions or new information developed after approval of the Project prevent completion of the Project or clearly demonstrate that the existing Project would no longer serve the best interest of the City in fulfilling the intent of this Agreement and the Election Ordinance.

(c) Bond Proceeds Reallocation - New Projects.

If the City proposes to reallocate Bond Proceeds to a new Project, the City shall forward its proposal to the Citizens Oversight Committee for its review and recommendation. The King County Council may reallocate Bond Proceeds following receipt of the Citizens Oversight Committee's recommendation, if it determines that the proposed new Project is consistent with the purpose of the Bonds and if it obtains the Agreement of another city within the same Project Category.

5.6. Interim Financing. Following the County's adoption of the Bond Ordinance, the City may issue short term obligations in anticipation of reimbursement from Bond Proceeds, pursuant to the Bond Ordinance and this Agreement, to defray the same Capital Costs for which Bond Proceeds may be utilized. The City shall submit such proposed obligations to the County's Chief Financial

Officer for approval prior to incurring such obligations, if the obligations are intended to be paid from Bond Proceeds. Upon approval by the County's Chief Financial Officer, the payment of principal and interest upon such approved short term obligations shall be a proper object of expenditure of Bond Proceeds.

Article VI. REPORTING REQUIREMENTS.

6.1. Reporting Schedule. During implementation of the Projects, the City shall provide the County and the Citizens Oversight Committee semi-annual reports describing Project implementation status. Such reports shall contain such information and shall be in a format all as specified by the County. The Report shall be submitted no later than the twentieth working day of January and July of each year during which such reports are required.

Article VII. TAX COVENANTS.

7.1. Preservation of Tax Exempt Status. If the County issues Tax Exempt Bonds to provide funds for the Projects, in addition to all other requirements set forth in this Agreement, so long as such Bonds are outstanding or for twenty years after the first disbursement of Bond Proceeds, whichever is longer:

(a) The City will not use or permit to be used any of the Bond Proceeds or the property or facilities acquired, constructed, developed or improved as part of the Projects in such manner and shall not take or omit to take any other action

as to cause the interest on the Bonds to be included in the gross income of the recipients thereof for purposes of federal income taxation.

(b) The City will provide certificates when and as required by Bond Counsel, the Code or the Internal Revenue Service in order to establish or maintain the tax exempt status of interest on the Bonds.

(c) The City will comply with any requirements imposed by the Code in order to preserve the tax exempt status of interest on the Bonds. The City will cooperate in any audit by the Internal Revenue Service, including disclosure of any records, contracts and other materials required by the Internal Revenue Service in order to establish or preserve the Bonds' tax exempt status or as may be required by the Code.

7.2. Indemnification.

If the Bonds become Taxable Bonds as a result of the acts or omissions of the City not approved in writing by the County, the City shall indemnify and hold the County, its officers, employees and agents, including bond counsel, harmless with respect to bond holders' claims and any costs attendant thereto, including any penalties and the County's attorneys' fees and costs in defending such claims.

Article VIII. RESPONSIBILITIES OF COUNTY.

8.1. Issuance of Bonds. Subject to the terms of this Agreement, the Election Ordinance and any Bond Ordinance or Bond Ordinances adopted by the King County Council, the County will issue Bonds for the purposes set forth herein and in the Election Ordinance in a principal amount of not more than \$117,640,000. Of that amount, the maximum principal amount of Bond Proceeds to be allocated to City of Seattle Projects is \$41,795,000 and for Suburban Jurisdiction Projects, \$35,010,000. Such Bonds may be sold at public sale in the manner required by law or, if the County determines it to be in its best interest, by negotiated sale. Maturity of such Bonds shall be as established by the County. The Bonds shall be issued over a period not to exceed seven years after their approval by the qualified electorate of King County and may be issued in more than one series, may be combined for the purpose of issuance with other authorized County bonds and shall be issued in such amounts and in such denominations and shall contain such redemption provisions and other terms and conditions as shall be determined by the County.

8.2. Distribution of Bond Proceeds-Agreement. Distribution to the City of any Bond Proceeds is specifically conditioned upon execution by the City and the County of this Agreement.

8.3. Future Support. The City may request additional funds for additional Projects as set forth in this Agreement; however, the County has no obligation to provide funds to the City in excess of the amount shown in Attachment B, nor to provide funds

to the City in support of Projects not specified in Attachment A. The County assumes no obligation for the future support of the Projects described herein, or any other projects except as expressly set forth in this Agreement.

Article IX. GENERAL PROVISIONS

9.1. 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, benefit or tax, 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, including attorneys' fees, arising out of or in any way resulting from the Projects, including but not limited to 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 for industrial insurance claims pursuant to Washington statute chapter 52 to the extent necessary to extend its obligation under this subparagraph 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.

9.2. 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.

9.3. 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 a different provision of this Agreement. No waiver shall be effective unless made in writing.

9.4. Notices. Any notice, consent, demand or other communication hereunder shall be in writing and shall be deemed to have been given if delivered in person or deposited in any United States Postal Service mail box, sent by registered or certified mail, return receipt requested, and first class postage prepaid, addressed to the party for whom it is intended as

follows: (1) if to the City: (City Manager, 123 Fifth Ave., Kirkland), WA 98033
(2) If to the County: Chief Financial Officer, 400 King County Courthouse, Seattle, Washington 98104.

These titles and addresses may be changed by written notice to the other party pursuant to this provision.

9.5. Interpretation. This Agreement shall be interpreted according to and enforced under the laws of the state of Washington. The section and subsection captions of this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision in this Agreement.

9.6. Separability. Each provision of this Agreement is separable from all other provisions. In the event any court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable for any reason, all remaining provisions will remain in full force and effect.

9.7. Entirety. This Agreement is a 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 Bonds, Bond Proceeds or Projects and constitutes the entire Agreement between the parties. The parties recognized time is of the essence in the performance of the provisions of this Agreement.

ATTACHMENT A

OPEN SPACE BOND
 ALLOCATION OF BOND PRINCIPAL
 BY PROJECT AND CITY

Name	City	Project Allocation
-----	-----	-----
White Riv/Lakeland	Auburn	1,804,063
Mercer Slough	Bellevue	4,109,255
Kelsey Creek	Bellevue	1,553,499
Lake Hills Greenbelt	Bellevue	952,144
Jones Lake Trail	Blk Diamond	484,076
Bothel Landing	Bothel	752,695
Parkside Open Space	Des Moines	651,467
N. Midway Park	Des Moines	100,226
Des Moines Crk. Tr.	Des Moines	326,956
Snoqualmie River Tr	Duvall	91,086
Hylebos Park Add #1	Federal Way	379,354
Hylebos Park Add #2	Federal Way	1,185,570
Adelaide/Lakota	Federal Way	315,310
SW 363rd, 12 & 14 SW	Federal Way	383,263
Spring Valley	Federal Way	1,700,329
Lutherland/Lk Kill.	Federal Way	1,142,022
Camelot Park Add.	Federal Way	256,227
Cougar Mtn Access	Issaquah	150,339
Squak/Issaquah Cr Tr	Issaquah	150,339
Green R Corridor	Kent	841,896
Lake Fenwick Trail	Kent	851,919
Juanita Bay Acq.	Kirkland	601,354
Totem Lk	Kirkland	250,564
Houghton Beach Acc.	Kirkland	300,677
Marine Park Access	Kirkland	551,241
Lk For Park Open Sp.	Lk Forest Park	425,959
First Hill Park & Tr	Mercer Island	618,075
Mercerdale	Mercer Island	130,293
53rd Place Greenbelt	Mercer Island	952,144
Miller Creek	Normandy Park	501,129
Tollgate Farm	North Bend	200,451
Bear Evans Crk Trail	Redmond	2,154,853
Cedar River Trail	Renton	2,014,472
Honey Creek Trail	Renton	375,846
Springbrook Trail	Renton	400,903
Lake Wash Waterfront	Renton	150,339
North SeaTac Park	SeaTac	2,605,869
Riverton Greenbelt	Tukwila	145,327
Duwamish/Green Lots	Tukwila	440,993
Macadam Pond	Tukwila	370,835
Maple Tree	Tukwila	216,488
Southgate	Tukwila	29,065
Greenwood	Multiple	345,739
Clark Lake	Multiple	1,067,516
Interurban Trail	Multiple	1,576,350
Black River Wetland	Multiple	324,731
Bond Sale Expenses	Multiple	49,787
Citizen Comm Support	Multiple	26,962
-----	-----	-----
	Totals	35,010,000
-----	-----	-----