

## **CITY COUNCIL AGENDA ITEM**

### **CITY OF SHORELINE, WASHINGTON**

**AGENDA TITLE:** Authorizing the City Manager to Enter Into an Interlocal Cooperation Agreement Between King County and the City of Shoreline for the Acquisition of Open Space Through the Conservation Futures Tax Levy Collections Grant Program

**DEPARTMENT:** Parks, Recreation and Cultural Services  
Administrative Services

**PRESENTED BY:** Eric Friedli, Director  
Bethany Wolbrecht-Dunn, Grants Administrator

**ACTION:**     \_\_\_ Ordinance     \_\_\_ Resolution       X   Motion  
              \_\_\_ Discussion     \_\_\_ Public Hearing

**PROBLEM/ISSUE STATEMENT:**

The City's Parks, Recreation and Open Space (PROS) Plan outlines potential properties for acquisition and inclusion into the City's park system. The most recent PROS Plan includes an emphasis on acquiring properties in the City's Light Rail Station Areas.

Conservation Futures Tax Levy (CFT) funds are King County property tax levy funds of which approximately \$8-9 million is available each year through this funding process for acquisition projects in cities and towns as well as the unincorporated areas of King County. The King County Council recently approved bonding for the CFT program, creating the opportunity for additional CFT funds. This program was created (as allowed by state law) in the early 1980s with the goal of maintaining, preserving, conserving and otherwise continuing the existence adequate open space lands. For the purposes of the CFT program, open space is defined as low-impact, passive recreation use. Generally, this means that only a maximum of 15% of the total surface area may developed or maintained with non-vegetative impervious surfaces (travel surfaces, either soft or paved, are not included in the calculation of this restriction).

Typically, applications for funding are taken in March of each year. Prior to the 2019 grant application cycle, CFT funding could only be requested for 50% of the appraised value for the property and related project costs and the project sponsors are responsible for obtaining the remaining 50%. However, King County continues to incorporate equity and inclusion in all aspects of their service delivery and now CFT accepts applications for 100% funding of projects that help meet their equity and inclusion goals.

The City Council approved the initial Interlocal agreement with King County in 2003 and five subsequent amendments through 2015. The City has successfully obtained multiple awards for property acquisition totaling \$2,415,488 in CFT funds that assisted in the following park acquisitions: South Woods, Kruckeberg Botanic Gardens, Hamlin Park addition, and Paramount Open Space additions.

In 2019, the City applied for assistance with acquiring properties within the Light Rail Station Area Planning areas along 185<sup>th</sup> Street and 145<sup>th</sup> Street. The properties are shown as the 185<sup>th</sup> Street Open Space CFT Acquisition Targets (Attachment A) and Paramount Park Open Space III CFT Acquisition Targets (Attachment B).

At this time, King County has requested that cities enter into new Interlocal Agreements. The updated Interlocal and Exhibit with the new CFT funding is attached (Attachment C). As the City continues to consider additional park property acquisitions, staff will return to Council for review and approval of additional CFT funding.

**RESOURCES/FINANCIAL IMPACT:**

The CFT funds are allocated as follows:

185 <sup>th</sup> Street Open Space Acquisition	\$1,076,900
Paramount Park Open Space III Acquisition	\$595,600
<b>TOTAL CFT</b>	<b>\$1,672,500</b>

Once these properties are acquired, the City will request reimbursement for the total project costs – up to 50% for the Paramount Park Open Space adjacent properties and up to 100% for the 185<sup>th</sup> Street Open Space properties.

**RECOMMENDATION**

Staff recommends that the Council move to authorize the City Manager to enter into the Interlocal Cooperation Agreement Between King County and the City of Shoreline for Conservation Futures-Funded Open Space Acquisition Projects.

**ATTACHMENTS:**

Attachment A – 185<sup>th</sup> Street Open Space CFT Acquisition Targets Map

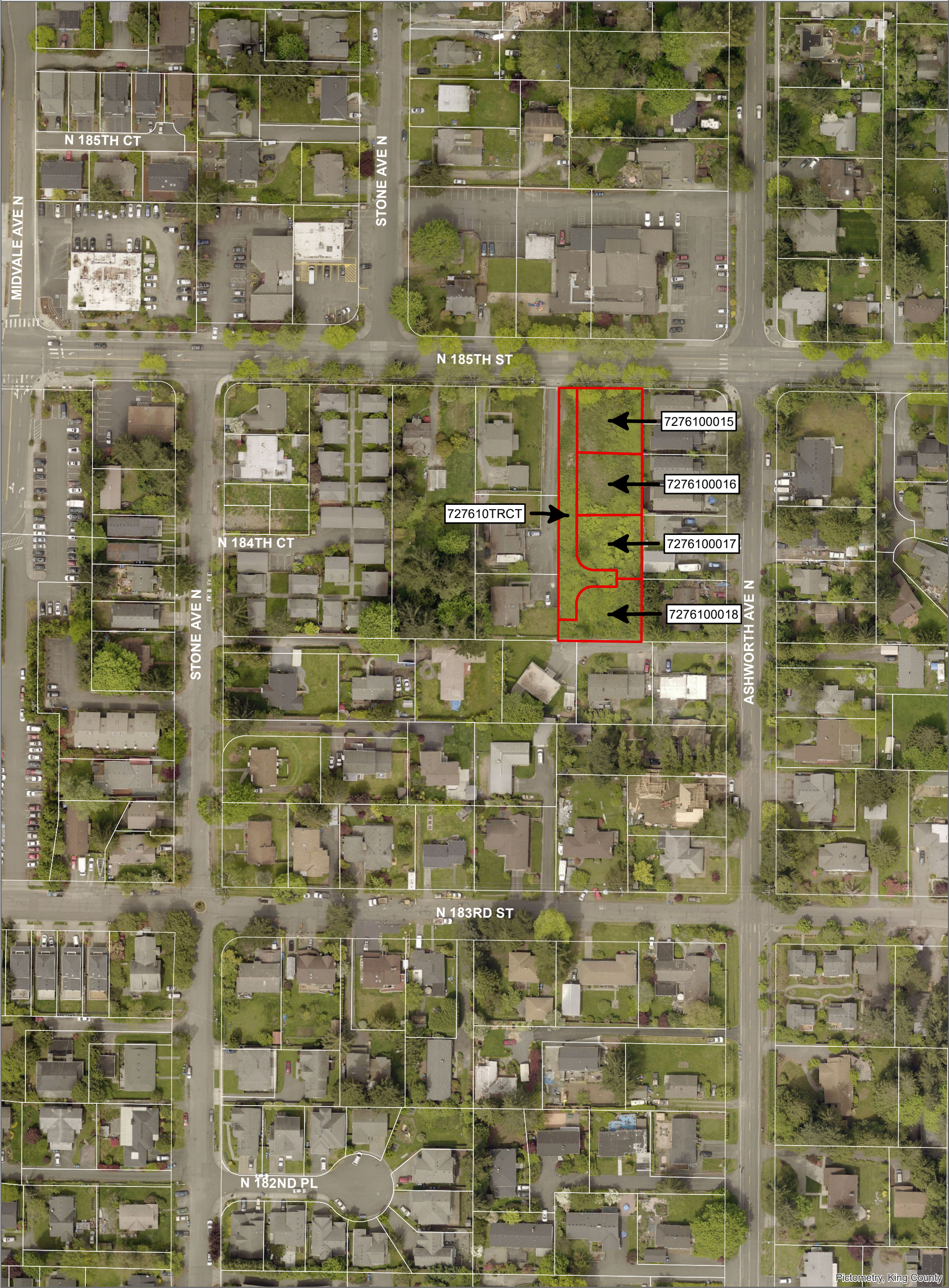
Attachment B – Paramount Park Open Space III CFT Acquisition Targets Map

Attachment C – Interlocal Cooperation Agreement Between King County and the City of Shoreline for Conservation Futures-Funded Open Space Acquisition Projects

Approved By:            City Manager **DT**      City Attorney **MK**



# 185th Open Space



Pictometry, King County

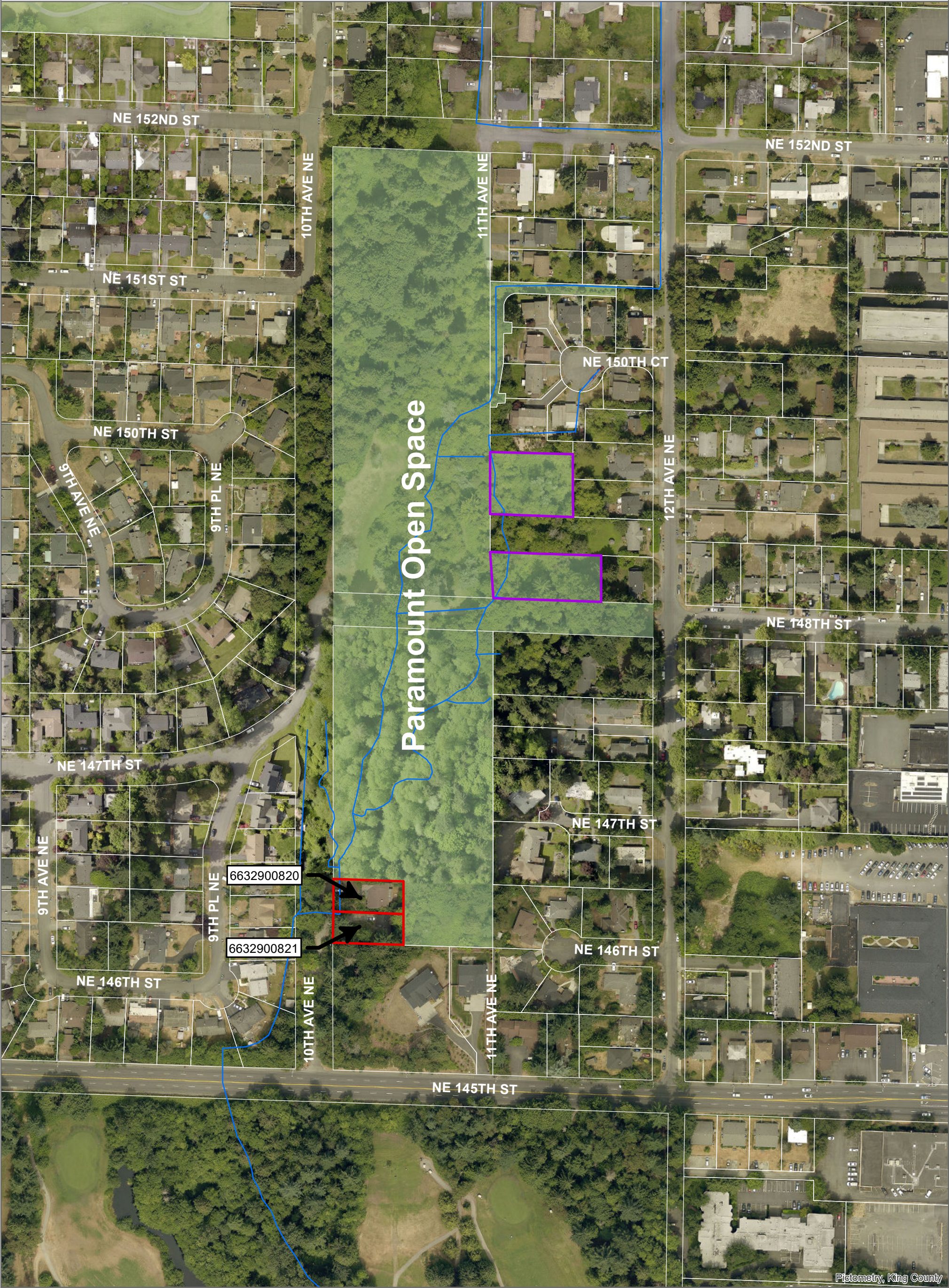


0 200 Feet

- Current Funding Targets
- Previous CFT
- Stream
- Park



# Paramount Open Space III



- Current Funding Targets
- Previous CFT
- Stream
- Park 7C-4



**INTERLOCAL COOPERATION AGREEMENT  
BETWEEN KING COUNTY AND THE CITY OF SHORELINE  
FOR CONSERVATION FUTURES-FUNDED  
OPEN SPACE ACQUISITION PROJECTS**

THIS INTERLOCAL COOPERATION AGREEMENT is a grant agreement entered into between the CITY OF SHORELINE (“Shoreline”) and KING COUNTY (“County”).

Article I. Recitals

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

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

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

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

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

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

The King County Council, by Ordinance 18978, has approved a new Interlocal Cooperation Agreement for future projects in order to add terms for the use of bond proceeds for certain projects, achieve consistency between the agreement and the King County Code, and make other technical changes.

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

## Article II. Definitions

### 1. Open Space

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

or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife reserves, natural reservations or sanctuaries or other open space, or (v) enhance recreational activities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state tracts of land of not less than one acre 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, or (c) any land meeting the definition of farms and agricultural conservation under subsection (8) of RCW 84.34.020. As a condition of granting open space classification, the legislative body may not require public access on land classified under (b) (iii) of this subsection for the purpose of promoting conservation of wetlands.

## 2. Project

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

## 3. Conservation Futures

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

## Article III. Purpose of the Agreement

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

Article IV. Term of Agreement

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

Article V. Conditions of Agreement

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

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



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

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



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

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

#### Article VI. Responsibilities of the City

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



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

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

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

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



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

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

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

#### Article VII. Responsibilities of the County

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

Article VIII. Other Provisions

Section 8.1 -- Hold Harmless and Indemnification.

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

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



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

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

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

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

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

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

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



KING COUNTY

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Dow Constantine  
King County Executive

Date: \_\_\_\_\_  
Acting under the authority of  
Ordinance 18978

Approved as to form:

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Dan Satterberg  
King County Prosecuting Attorney

CITY OF SHORELINE

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Debra S. Tarry  
City Manager

Date: \_\_\_\_\_  
Acting under the authority of  
Council motion on 3/2/2020

Approved as to form:

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Julie Ainsworth Taylor  
Assistant City Attorney

## EXHIBIT A

### 2020 CONSERVATION FUTURES LEVY CITY OF SHORELINE ALLOCATION

Jurisdiction	Project	Allocation
Shoreline	185 <sup>th</sup> Street Open Space Acquisition	\$1,076,900
Shoreline	Paramount Park Open Space Acquisition	\$297,800 (annual)
Shoreline	Paramount Park Open Space Acquisition	\$297,800 (bond)
TOTAL		\$1,672,500

#### Project Description:

#### **Project #1136983: Shoreline – 185<sup>th</sup> Street Open Space Acquisition (\$1,076,900 CFT bond funding)**

The City of Shoreline is seeking to acquire four vacant parcels totaling 0.5 acres within the city's 185th Street Light Rail Station Subarea. This project will provide a new open space in a rapidly growing and densifying area recently up-zoned to accommodate more growth near mass transit. There is urgency for funding this project as it is rare for four adjacent urban parcels to be undeveloped and all owned by the same individual, in an area with a great amount of residential development capacity. The property was granted a match waiver. Project funding was authorized in King County Ordinance 18987 & 19021.

**Is this a Bond-financed Project? Yes**

#### **Project # 1136841: Shoreline – Paramount Park Open Space Acquisition (\$297,800 CFT annual funding)**

The City of Shoreline seeks to add two parcels totaling 0.35 acres to the south end of its existing 10.7 acre Paramount Park. The city envisions removing the two homes and converting the driveway to a trail, thereby creating a pedestrian trail from the park to SR 523/NE 145th Street. This trail will provide a trail-based connection from the neighborhood to NE 145th Street, and may offer an alternative way for residents to reach the NE 145th Street light rail station that will be constructed less than ¼ mile away at I-5. CFT funding will be matched with city funds. Project funding was authorized in King County Ordinance 19021.

**Is this a Bond-financed Project? No**



**Project # 1137008: Shoreline – Paramount Park Open Space Acquisition (\$297,800 CFT bond funding)**

The project description is identical to the Paramount Park award listed above, only this award is made using Conservation Futures bond funding rather than annual funding. Project funding was authorized in King County Ordinance 18987 & 19021.

**Is this a Bond-financed Project?** Yes

## **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.