

After Recording Return to:

Barbara Sikorski, Asst. Clerk
Snohomish County Council
3000 Rockefeller, M/S 609
Everett, WA 98201

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SNOHOMISH COUNTY, WASHINGTON
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Documents Title:

INTERLOCAL AGREEMENT BETWEEN THE CITY OF ARLINGTON
AND SNOHOMISH COUNTY CONCERNING THE TRANSFER OF
DEVELOPMENT RIGHTS RECEIVING AREA ESTABLISHED BY AMENDED
ORDINANCE NOS. 05-141 AND 05-142

I. PREAMBLE

1.1 Parties. This Interlocal Agreement (hereinafter "Agreement") by the City of Arlington, a Washington Municipal Corporation (hereinafter "City"), and Snohomish County, a political subdivision of the State of Washington (hereinafter "County")

1.2 Authority. This Agreement is entered into pursuant to Chapter 36.70A RCW (the Growth Management Act or "GMA"), Chapter 36.115 RCW (the Governmental Services Act), Chapter 39.34 RCW (the Interlocal Cooperation Act), and Chapter 30.35A SCC (Transfer of Development Rights or "TDR").

II. PURPOSE AND RECITALS

2.1 Snohomish County TDR Code (Chapter 30.35A SCC).

2.1.1 The GMA requires counties to designate lands of long-term significance to the commercial production of agriculture and to assure the conservation of such lands for agricultural use. To help further this GMA mandate while also providing compensation to farmers, Snohomish County Code (SCC) Chapter 30.35A authorizes the transfer of development rights from sites located within "sending areas" that are targeted for conservation by the Snohomish County GMA Comprehensive Plan. Development rights properly transferred from a sending site can be applied, pursuant to Chapter 30.35A SCC, to "receiving sites" that are appropriate for urban development.

2.1.2 Development rights are transferred from sending sites through the issuance of "TDR certificates" to sending area landowners pursuant to SCC 30.35A.050, which requires the grant of a conservation easement restricting development on the sending

site in accordance with the requirements of SCC 30.35A.060. TDR certificates can be freely sold by the sending site landowner to whom they are issued. Receiving site landowners who obtain TDR certificates may use those certificates to obtain urban additional densities or other development incentives pursuant to applicable regulations.

2.2 City of Arlington TDR Receiving Area.

2.12.1 As required by the GMA, the County Council has adopted an Urban Growth Area for the City of Arlington (hereinafter "AUGA") that identifies areas within unincorporated Snohomish County which the City may annex in the future."

2.2.2 On December 21, 2005, the Snohomish County Council adopted Amended Ordinance No. 05-141 establishing policies for an interjurisdictional TDR program with expanded UGAs to serve as TDR receiving areas and Amended Ordinance No. 05-142 creating a TDR receiving area for the AUGA (hereafter "TDR Receiving Area").

2.2.3 Pursuant to the policies adopted by Amended Ordinance No. 05-141, Amended Ordinance No. 05-142 adopted an expansion of the AUGA and implementing rezone that were expressly conditioned on the execution of an Interlocal Agreement by the County and City meeting certain minimum requirements established by Amended Ordinance No. 05-141. The purpose of this Agreement is to satisfy the requirement of said ordinance and thus trigger expansion of the AUGA to include the TDR Receiving Area, consistent with the intent of the County Council in adopting its TDR policies relating to the AUGA.

2.2.4 In adopting Amended Ordinance Nos. 05-141 and 05-142, Snohomish County considered the fourteen goals of the GMA for the development of local comprehensive plans, as codified in RCW 36.70A.020, and the Snohomish County Countywide Planning Policies (CPPs) adopted by Ordinance No. 93-004 and amended by Amended Ordinance No. 04-007. The adoption of the TDR program was based on public testimony by affected property owners, potential developers, City and County staff and officials, and other citizens.

III. APPLICABILITY AND AMENDMENTS

3.1 Applicability. This Agreement shall apply to all development occurring within the TDR receiving area designated in Amended Ordinance No. 05-141 and 05-142 after the effective date of this Agreement, and otherwise as expressly set forth herein.

3.2 Amendments. The City and County recognize that amendments to this Agreement may be necessary to clarify particular sections or to update and expand the Agreement. Both parties may pursue these amendments as necessary.

3.3 Process for Amending this Agreement. An addendum or amendment to this

Agreement must be mutually agreed to by the parties and executed in writing before becoming effective. Any addendum or amendment to the Agreement shall be executed in the same manner as provided by law for the execution of this Agreement.

IV. OBLIGATIONS OF THE CITY OF ARLINGTON.

4.1 Annexation.

4.1.1 The City agrees to annex the TDR receiving area in a timely manner following expansion of the AUGA, which occurs upon the execution of this Agreement, consistent with Amended Ordinance No. 05-142. For purposes of this Agreement, both the County and City recognize that the City of Arlington is an optional municipal code city and that annexation is governed by the provisions of Chapter 35A.14 RCW and proposed annexations are subject to review by the Boundary Review Board under the provisions of Chapter 36.93 RCW. Both parties recognize that the annexation process is typically initiated by property owners who desire to have their property located within the city limits of a municipality. The parties recognize that market forces, political issues and other constraints affect the annexation process. For purposes of this Agreement, the City agrees that it will actively pursue the initiation of annexation proceedings in a timely manner and, in any event, if property owners have not voluntarily initiated the annexation process pursuant to RCW 35A.14.120, that the City will initiate a resolution for an annexation election for all or some portion of the AUGA within twelve (12) months from the effective date of this Agreement.

4.1.2 Notwithstanding the provisions of Paragraph 4.1.1, above, the City agrees not to annex property within the TDR Receiving Area in the absence of adopted TDR regulations that are consistent with the requirements of this Agreement.

4.2 Adoption or Amendment of City TDR Regulations. The City has adopted TDR regulations in its Ordinance #1391, dated April 17, 2006, which the County and City agree are sufficient to meet the requirements for the conditional UGA expansion established by Amended Ordinance No. 05-142. The City agrees to provide notice to the County, and an opportunity to comment, regarding that any changes or amendments to its TDR regulations said ordinance which are applicable to the TDR Receiving Area and to ensure that any such changes or amendments require notice to the County and must be consistent with this Interlocal Agreement and all applicable requirements of Amended Ordinance Nos. 05-141 and 05-142.

4.3 Requirements for the Use of TDR Certificates. Pursuant to the City's TDR regulations and consistent with paragraph 4.2 of this Agreement, the City shall require applicants for development approvals within the TDR Receiving Area to provide TDR certificates issued pursuant to Chapter 30.35A SCC. However, both parties acknowledge and agree that certain land uses or activities may occur within the TDR receiving Area which are

not urban development or which serve an overriding public interest and therefore should not be required to transfer densities from TDR sending areas through the provision of TDR certificates. The City's TDR regulations include a provision, which is acceptable to the City and County, exempting such uses and activities from the requirement to provide TDR certificates. Pursuant to Paragraph 4.2 of this Agreement, the City agrees to provide notice to the County regarding any changes or amendments to this exemption which are applicable to the TDR Receiving Area.

4.4 Extinguishment of TDR Certificates.

4.4.1 The County and the City agree that, pursuant to SCC 30.35A.115, TDR certificates shall be considered transferred to a receiving site when a final decision has been made approving the receiving site development activity for which the TDR certificates are provided. The County and City further agree that, once TDR certificates have been transferred to a receiving site, they shall be considered void and may not be applied to subsequent development approvals within the TDR Receiving Area; provided, however, that if a decision approving a receiving site development activity is appealed, the TDR certificates provided in connection with that approval shall not be considered void unless the decision approving the development activity is affirmed following the exhaustion of all administrative and judicial appeals.

4.4.2 Upon approval of the development activity for which TDR certificates are provided, the City shall require applicants to submit a "TDR extinguishment document" listing the serial number of each TDR certificate that has been transferred to a receiving site and the legal description of the receiving site. Once the applicable limitations period for all administrative and judicial appeals of the development approval have passed, the City shall remit the TDR extinguishment document to the County; provided, however, that if the development approval is appealed, the City shall retain the TDR extinguishment document until such time as the development approval is affirmed and all remaining appeal periods have passed.

4.5 Tracking of TDR Certificates. The City shall adopt a process that allows Snohomish County to monitor the number of TDR certificates presented and accepted by the City. Both parties agree that it may be appropriate at some point to delegate the monitoring and tracking of TDR certificates to a third party, such as a land trust, rather than to have the County administer this portion of the program. If responsibilities are transferred to a third party, both parties agree to amend this Agreement in accordance with the agreements reached as to monitoring and administering the TDR certificate program.

V. OBLIGATIONS OF SNOHOMISH COUNTY

5.1 Monitoring and Tracking of TDR Certificates. Subject to further amendment of

this agreement, the County agrees to be initially responsible for tracking and monitoring the TDR Certificates required by this Interlocal Agreement and Chapter 30.35A SCC, and all required tracking and monitoring of related conservation easements.

5.2 Existing Rural Zoning. The County agrees that, during the term of this Agreement, the TDR Receiving Area shall retain its existing rural zoning pursuant to the County's TDR regulations and policies until such a time as the TDR Receiving Area, or any portion thereof, is no longer under county land use jurisdiction. The purpose for retaining rural zoning is to prevent urban development from occurring prior to annexation, at which point the City's TDR regulations shall apply, and to ensure that urban development will be compatible with the City's development standards and served by adequate facilities.

VI. JOINT RESPONSIBILITIES OF CITY AND COUNTY

6.1 Zoning, Master Planning and Permit Review. The City and County agree to work cooperatively with each other to identify provisions for zoning, master planning, and permit review within the TDR receiving area, in order to ensure that the TDR program is successful. Such provisions shall, if appropriate, be reflected in an amendment pursuant to Paragraph 3.3, above.

VII. DISPUTE RESOLUTION

7.1 Mediation. The City and County mutually agree to enter into mediation through an agreed upon mediator and process, if agreement cannot be reached regarding interpretation or implementation of any provision of this Agreement. The parties shall use the mediation process in good faith to attempt to come to agreement early in the process, and prior to any appeals or litigation which either might otherwise be entitled to bring.

VIII. RELATIONSHIP TO EXISTING LAWS AND STATUTES

8.1 Existing Law Unaffected. This Agreement in no way modifies or supersedes existing laws and statutes. In meeting the commitments encompassed in this Agreement, all parties shall comply with the requirements of the Open Meetings Act, Growth Management Act, State Environmental Policy Act, Annexation Statutes, and other applicable federal, state or local law. The County and City retain the ultimate authority for land use and development decisions within their respective jurisdictions. By executing this Agreement, the County and City do not purport to abrogate the decision-making responsibility vested in them by law.

IX. EFFECTIVE DATE, DURATION AND TERMINATION

9.1 Effective Date. This Agreement shall become effective following the approval of the Agreement by the official action of the governing bodies of each of the parties hereto

and the signing of the agreement by the duly authorized representative of each of the parties hereto.

9.2 Duration. This Agreement shall remain in effect until modified or terminated by agreement of the parties.

9.3 Termination or Modification. This Agreement may be modified or terminated upon mutual agreement of the parties. Any modification shall become effective thirty (30) days following written amendment to the Agreement executed by both parties. Any amendments and termination shall be in writing and executed in the same manner as provided by law for the execution of this Agreement. Either party may terminate its obligations under this Agreement upon 180 days advance notice to the other party and under the following conditions. The party seeking the unilateral termination, the "aggrieved party," shall agree to professional mediation with the other party if so requested. The other party must make its request in writing within 60 days of receipt of the written notice from the aggrieved party. Under this Agreement, both parties agree to share equally in the expense of mediation in such cases. Following any amendment or termination, the County and City are mutually responsible for fulfilling any outstanding obligations under this Agreement incurred prior to the effective date of the amendment or termination. The County and City agree to follow the terms of this Agreement for any developments submitted prior to the effective date of the amendment or termination.

X. INDEMNIFICATION AND LIABILITY

10.1 City to Hold County Harmless. The City shall protect, save harmless, indemnify, and defend, at its own expense, the County, its elected and appointed officials, officers, employees and agents, from any loss or claim for damages of any nature whatsoever, arising out of the City's performance of this Agreement, including claims by the City's employees or third parties, except for those damages solely caused by the negligence or willful misconduct of the County, its elected and appointed officials, officers, employees or agents.

10.2 County to Hold City Harmless. The County shall protect, save harmless, indemnify, and defend at its own expense the City, its elected and appointed officials, officers, employees and agents from any loss or claim for damages of any nature whatsoever, arising out of the County's performance of this Agreement, including claims by the County's employees or third parties, except for those damages solely caused by the negligence or willful misconduct of the City, its elected and appointed officials, officers, employees or agents.

10.3 Proportionate Liability. In the event of liability for damages of any nature whatsoever arising out of the performance of this Agreement by the City and the County, including claims by the City's or the County's own officers, officials, employees, agents, volunteers, or third parties, caused by or resulting from the concurrent negligence of the

County and the City, their officers, officials, employees and volunteers, each party's liability hereunder shall only be to the extent of that party's negligence.

10.4 Execution of Agreement Not Grounds for Liability. No liability shall be attached to the City or the County by reason of entering into this Agreement except as expressly provided herein.

XI. SEVERABILITY

11.1 Effect of Partial Invalidity Limited. Should a court of competent jurisdiction declare any clause, phrase, sentence or paragraph of this Agreement invalid or void, the remaining provisions of this Agreement not so declared shall remain in full force and effect.

XII. EXERCISE OF RIGHTS OR REMEDIES

12.1 Rights or Remedies Not Waived. Failure of either party to exercise any rights or remedies under this Agreement shall not be a waiver of any obligation by either party and shall not prevent either party from pursuing that right at any future time.

XIII. RECORDS

13.1 Record Retention and Inspection. Both parties shall maintain adequate record to document obligations performed under this Agreement. Both parties shall have the right to review the other party's records with regard to the subject matter of this Agreement, upon reasonable notice. With respect to records relating to specific developments within the TDR Receiving Area, such rights and obligations shall last for six (6) years from the date of permit issuance.

XIV. ENTIRE AGREEMENT

14.1 Agreement Constitutes Entire Understanding of the Parties. This Agreement constitutes the entire agreement and understanding of the parties concerning the TDR program, including but not limited to the obligations of the parties with respect to the TDR Receiving Area created by Amended Ordinance Nos. 05-141 and 05-142. It is anticipated that the parties may enter into further interlocal agreements on specific subject areas, as indicated by the provisions of this Agreement.

XV. GOVERNING LAW AND STIPULATION OF VENUE

15.1 Washington Law Controls. This Agreement shall be governed by the laws of the State of Washington. Any action hereunder must be brought in the Superior court of Washington for Snohomish County.

XVI. CONTACTS FOR AGREEMENT

16.1 The contact persons for this Agreement are:

Brad Collins
Community Development Director
City of Arlington
238 N. Olympic Avenue
Arlington, WA 98223
(360) 403-3445

Tom Niemann
Snohomish County Dept. of
Planning and Development Services
3000 Rockefeller Avenue, M/S 604
Everett, WA 98201
(425) 388-3311 ext. 2214

IN WITNESS WHEREOF, the parties have signed this Agreement, effective on the later date indicated below.

DATED this 19th day of July, 2006. D-10

CITY OF ARLINGTON

SNOHOMISH COUNTY

By:

By:

Margaret Larson
Margaret Larson, Mayor

Aaron Reardon
Aaron Reardon, County Executive

Date: 6-26-06

Date: 7/27/06

ATTEST:

ATTEST:

Kathy Peterson
Kathy Peterson, City Clerk

Shula McCallister
Clerk of the County Council *asst*

Approved as to form:

Approved as to form:

Office of the City Attorney

Snohomish County Prosecutor

Steven J. Peiffle
Steven J. Peiffle
City Attorney

Brent D. Lloyd
Brent D. Lloyd
Deputy Prosecuting Attorney for
Snohomish County

Adopted: July 19, 2006
Effective: August 5, 2006

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

ORDINANCE NO. 06-047

AUTHORIZING THE COUNTY EXECUTIVE TO SIGN
AN INTERLOCAL AGREEMENT WITH
THE CITY OF ARLINGTON CONCERNING THE TRANSFER OF
DEVELOPMENT RIGHTS RECEIVING AREA ESTABLISHED BY AMENDED
ORDINANCE NOS. 05-141 AND 05-142

WHEREAS, Transfer of Development Rights (TDR) programs provide a means of preserving farmland and other sensitive areas from development by allowing landowners within designated "sending areas," which are targeted for conservation, to transfer the development rights from their property to designated "receiving areas," within which development incentives are provided; and

WHEREAS, on September 10, 2003, the County adopted Amended Ordinance No. 03-100, which created a TDR sending area designation on the Future Land Use (FLU) Map, an element of the Snohomish County Growth Management Act (GMA) Comprehensive Plan: General Policy Plan (GPP), and applied that designation to portions of the Stillaguamish River valley; and

WHEREAS, on December 15, 2004, the County adopted Amended Ordinance No. 04-123, which authorizes the issuance of TDR certificates that can be transferred from TDR sending areas to receiving areas, subject to the grant of an easement to the County conserving the sending site for which the certificates are issued; and

WHEREAS, on December 21, 2005, the County adopted Amended Ordinance No. 05-141, which amended pre-existing GPP policies for TDR sending areas and adopted GPP policies for TDR receiving areas, including a FLUM overlay designation that was applied to certain properties near the City of Arlington (TDR Receiving Area); and

WHEREAS, GPP LU Policy 14.A.9, adopted by Amended Ordinance No. 05-141, authorized the expansion of Urban Growth Areas (UGAs) to include TDR

receiving areas provided that the expansion is conditioned on the execution of interlocal agreements with adjacent cities; and

WHEREAS, on December 21, 2005, the County adopted Amended Ordinance No. 05-142, which expanded the Arlington UGA to include the TDR Receiving Area, but conditioned the UGA expansion on execution of an interlocal agreement between the City of Arlington (City) and Snohomish County (County) by August 1, 2006; and

WHEREAS, pursuant to GPP LU Policy 14.A.9, the interlocal agreement required by Amended Ordinance No. 05-142 must include an agreement by the City to annex the TDR Receiving Area in a timely manner and to apply TDR regulations to the area following annexation, as well as an agreement by the County to retain existing rural zoning for the area prior to annexation; and

WHEREAS, following adoption of Amended Ordinance Nos. 05-141 and 05-142, the City and the County negotiated an interlocal agreement entitled "Interlocal Agreement Between the City of Arlington and Snohomish County Concerning the Transfer of Development Rights Receiving Area Established by Amended Ordinance Nos. 05-141 and 05-142" (Agreement), which is attached hereto as Exhibit A and incorporated herein by reference as if set forth in full; and

WHEREAS, the Agreement represents an important step in the preservation of farmlands of long-term commercial significance; and

WHEREAS, the City and the County have worked together along with a stakeholder group through a public process to develop this Agreement that is consistent with and serves to further implement the City's and the County's Growth Management Act Comprehensive Plans; and

WHEREAS, the Snohomish County Council held a public hearing on _____, 2006, to hear public testimony regarding the Agreement and to consider authorizing the County Executive to execute the Agreement on behalf of Snohomish County.

NOW, THEREFORE, BE IT ORDAINED:

Section 1. The county council adopts and incorporates the foregoing recitals as findings and adopts and incorporates the following additional findings by reference as if set forth in full:

- A. The findings and conclusions adopted in sections 1 and 2 of Amended Ordinance No. 04-123.
- B. The findings and conclusions adopted in sections 1 and 2 of Amended Ordinance No. 05-141.
- C. The findings and conclusions adopted in sections 1 and 2 of Amended Ordinance No. 05-142.

Section 2. The Snohomish County Council authorizes the County Executive to sign the “Interlocal Agreement Between the City of Arlington and Snohomish County Concerning the Transfer of Development Rights Receiving Area Established by Amended Ordinance Nos. 05-141 and 05-142” (Exhibit A), which is attached hereto as Exhibit A and incorporated herein by reference as if set forth in full.

PASSED this 19th day of July, 2006.

ATTEST:

Kathryn Bratcher
Clerk of the Council

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

Kirke Sievers, Council Chair

APPROVED
 EMERGENCY
 VETOED

DATE: July 26, 2006

Aaron G. Reardon
County Executive

ATTEST: Brian Parry

Approved as to form only:

Brent Lloyd
Deputy Prosecuting Attorney