



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**June 17, 2014**

**Ordinance 17835**

**Proposed No. 2014-0144.2**

**Sponsors Upthegrove**

1           AN ORDINANCE authorizing the King County executive  
2           to enter into an interlocal agreement with the city of  
3           Normandy Park to implement a regional program to  
4           transfer development rights from rural lands in King  
5           County into the city of Normandy Park.

6           STATEMENT OF FACTS:

- 7           1. The Washington state Growth Management Act, codified at chapter  
8           36.70A RCW, establishes a policy of directing growth and development  
9           into urban areas, protecting rural and resource land and encouraging the  
10          use of innovative tools like transfer of development rights ("TDR") to  
11          accomplish these outcomes.
- 12          2. The Growth Management Act encourages the conservation of  
13          productive agricultural and forest lands and the retention of rural open  
14          space to conserve fish and wildlife habitat and enhance recreational  
15          opportunities.
- 16          3. King County adopted a TDR Program in 2001 to permanently preserve  
17          rural and resource lands by transferring rural development potential into  
18          existing urban areas; since 2001, the King County TDR Program has

19 helped to protect 141,765 acres of rural and resource lands in  
20 unincorporated King County.

21 4. King County has worked with the city of Normandy Park to develop a  
22 means by which rural TDRs from shoreline and near-shore properties on  
23 Vashon Island may be used to increase density within the city to achieve  
24 conservation that is important to the environmental health of the Puget  
25 Sound, while concentrating growth in the county's Urban Growth Area.

26 5. The city council of Normandy Park, by Ordinances 887 and 888,  
27 amended its land use code to allow the Manhattan Village Subarea to be a  
28 receiving site for King County TDRs, subject to an adopted interlocal  
29 agreement with King County that will provide the city with \$350,000 in  
30 Conservation Futures Tax Levy ("CFT") funds as a critical financial  
31 incentive for the city to accept rural development rights and help the city  
32 create open space and park amenities in the city's neighborhood where  
33 TDR related development is occurring.

34 6. In 2007, Ordinance 15652 appropriated CFT funding for the King  
35 County TDR Program, through CFT project numbers 315600 and 315620,  
36 Attachment B to this ordinance, to provide amenity funds to cities that act  
37 as receiving sites for rural TDRs. These funds are designated for the  
38 acquisition of open space in cities as part of TDR interlocal agreements to  
39 create economic incentives for cities to accept additional density and  
40 simultaneously protect King County's rural and resource areas.

41 7. In 2009, the Washington state Legislature affirmed the value of  
42 regional TDR programs by adopting Second Substitute House Bill 1172.

43 8. The Washington state Governor's Office recognized the city and the  
44 county by awarding the city with the 2013 Governor's Smart Communities  
45 Award for the city's Manhattan Village Subarea plan and planned action  
46 ordinance that includes TDR partnership with King County.

47 9. The King County TDR bank currently holds 21 transferable  
48 development rights, purchased from private rural landowners of shoreline  
49 property on Vashon Island, which would be eligible for sale to applicants  
50 seeking to take advantage of zoning incentives established by city of  
51 Normandy Park ordinances 887 and 888. K.C.C. 21A.37.140 requires an  
52 interlocal agreement with receiving site cities prior to sale and transfer of  
53 TDR credits from the TDR bank.

54 10. The city of Normandy Park adopted legislation authorizing the city  
55 manager to enter into an interlocal agreement with King County,  
56 Attachment A to this ordinance.

57 11. King County and cities are authorized to enter into interlocal  
58 agreements as set forth in chapter 39.34 RCW, the Interlocal Cooperation  
59 Act.

60 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

61 SECTION 1. The King County executive is hereby authorized to enter into an  
62 interlocal agreement with the city of Normandy Park, containing language substantially  
63 similar to that of Attachment A to this ordinance, to establish a regional program to

64 transfer development rights from lands in King County's designated rural areas into the  
65 city of Normandy Park for projects listed and described in Attachment B to this  
66 ordinance.  
67

Ordinance 17835 was introduced on 4/7/2014 and passed by the Metropolitan King County Council on 6/16/2014, by the following vote:

Yes: 9 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,  
Ms. Lambert, Mr. Dunn, Mr. McDermott, Mr. Dembowski and Mr.  
Upthegrove  
No: 0  
Excused: 0

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON



Larry Phillips, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 24 day of JUNE, 2014.



Dow Constantine, County Executive

**Attachments:** A. Interlocal Agreement revised 6-3-14, B. 2007 Urban TDR Program Conservation Futures Project Description

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2014 JUN 24 PM 4:17  
CLERK  
KING COUNTY COUNCIL

**INTERLOCAL AGREEMENT FOR THE IMPLEMENTATION OF A  
REGIONAL PROGRAM TO TRANSFER DEVELOPMENT RIGHTS FROM  
RURAL UNINCORPORATED KING COUNTY TO THE MANHATTAN  
VILLAGE SUB AREA IN THE CITY OF NORMANDY PARK**

This Interlocal Agreement for the Implementation of a Regional Program to Transfer Development Rights from Rural Unincorporated King County to the Manhattan Village Sub Area in the City of Normandy Park, hereafter "Agreement," is hereby entered into by King County, a political subdivision of the State of Washington, herein after referred as the "County," and the City of Normandy Park, a municipal corporation of the State of Washington, herein referred to as the "City," and collectively as the "Parties."

**RECITALS**

WHEREAS, the Washington State Growth Management Act (GMA), RCW 36.70A, directs development into urban areas and discourages inappropriate conversion of undeveloped rural land into sprawling, low-density development; and

WHEREAS, the GMA encourages the conservation of productive forest and agricultural lands and the retention of open space to conserve fish and wildlife habitat and enhance recreational opportunities; 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's rural and resource areas are recognized by both the City and the County as containing important countywide public benefits such as wildlife habitat and scenic resources, forestry, agricultural, and recreational opportunities; and

WHEREAS, the City has identified rural and resource lands in King County as preservation priorities; and

WHEREAS, the County has in King County Code 21A.37 adopted a Transfer of Development Rights ("TDR") program which authorizes incorporated areas to receive development rights transferred from rural and resource unincorporated areas; and

WHEREAS, by Ordinances 889 the City adopted the Manhattan Village Plan which encourages the incorporation of a TDR system to promote redevelopment while protecting ecological resources and open space with public benefits; and

WHEREAS, the Manhattan Village Plan calls for increased public amenities to improve the pedestrian, park, and transit pattern in Manhattan Village; and

WHEREAS, by Ordinance 888 and 887 the City adopted the Manhattan Village Regulations as Title 18 of the Normandy Park Municipal Code to implement the Manhattan Village Plan; and

WHEREAS, the Manhattan Village Regulations provide for additional residential density or commercial development capacity for Manhattan Village, and permits the use of a TDR program to increase residential and commercial development capacity in Manhattan Village under conditions described in this Agreement; and

WHEREAS, the Manhattan Village Regulations authorize and prioritize sending sites from unincorporated King County for use in the Manhattan Village; and

WHEREAS, the County in its 2007 Budget, Ordinance 15652 appropriated funding to provide amenity payments to those cities that enter into interlocal TDR agreements with the County; and

WHEREAS, the City and the County share an interest in creating an effective, cooperative development right transfer system to achieve: the City's goals for the Manhattan Village Sub Area, the County's goals in the King County Comprehensive Plan, and goals inherent to the Countywide Planning Policies and the GMA; and

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

WHEREAS, an extension of this Agreement may be considered based on the availability of future County, State, or federal infrastructure funding incentives for the City; and

WHEREAS, this Agreement will act to encourage other cities in the Puget Sound region to enter into similar TDR agreements with the County; 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 through this Agreement to transfer development rights from unincorporated rural sending areas in the County(hereafter “TDR Credits”) into the Manhattan Village Sub Area in the City according to the provisions described below and pursuant to K.C.C. 21A.37. Furthermore, this Agreement seeks to establish a marketplace for TDR Credits in order to preserve rural lands deemed important to the City and the County on an ongoing basis, while investing in City amenities, using the King County TDR Bank (hereafter the “TDR Bank”).

**II. RESPONSIBILITIES AND POWERS OF THE CITY OF NORMANDY PARK**

**A. City Ordinances**

The City has adopted the Manhattan Village regulations via ordinances 887 and 888 to implement this Agreement. The ordinances provide the following:

1. Amendments to Chapter 18 of the Normandy Park Municipal Code which establish increased development capacity, new development regulations and design standards for development within the Manhattan Village Sub Area;
2. Amendments to Chapter 18 of the Normandy Park Municipal Code, which designate the NC, MU, and RM-1800 zones in the Manhattan Village Sub Area as TDR receiving sites (hereafter “Manhattan Village Receiving Site), as depicted in Exhibit A and incorporated herein, which provides for the transfer of development rights from sending sites located in rural unincorporated King County into the Manhattan Village Receiving Site;
3. Amendments to Chapter 18 of the Normandy Park Municipal Code to establish residential density and commercial development capacity incentive provisions, as depicted in the “TDR Density Incentive Table” in Exhibit B and incorporated herein, which allow development projects within the Manhattan Village Receiving Site to increase residential density and commercial development capacity beyond an established base with the purchase and use of TDR Credits; and
4. Established and modified development standards and provisions for public amenities.

**B. TDR Sending Site Area**

1. The City has identified the following “Sending Site Area,” described below,

from which TDR Credits may be used for increased residential density and commercial development capacity in the Manhattan Village Receiving Site. Properties within the Sending Site Area provide a public benefit to the City and adhere to the requirements of K.C.C. 21A.37. The Sending Site Area is described as follows:

The Sending Site Area is determined to be the near-shore and shoreline properties surrounding Vashon Island in King County. This rural area is important to the ecology of Puget Sound and is part of the rural scenic and open space views from the City across the waters of Puget Sound.

**C. TDR Credit Limit and TDR Receiving Site Incentives**

1. Up to seventy-five (75) TDR Credits may be used for increased residential density or commercial development capacity in the Manhattan Village Receiving Site pursuant to the TDR Density Incentive Table codified in Chapter 18 of the Normandy Park Municipal Code, and attached as Exhibit B. The term "TDR Credit limit" refers to the limit of seventy-five (75) TDR Credits from the Sending Site Area, as determined pursuant to K.C.C. 21A.37.040, which can be used for residential density and commercial development capacity in the Manhattan Village Receiving Site.
2. Upon approval by the City of a building permit using TDR Credits in the Manhattan Village Receiving Site, and prior to its issuance, the City shall execute and deliver to the County TDR extinguishment documentation in a form acceptable to the County in its reasonable discretion.

**D. King County TDR Bank**

1. The City agrees that the Bank will play an important role in facilitating the City-County TDR Credit market by: (1) buying TDR Credits from willing landowners in the Sending Site Area, (2) holding the TDR Credits, and (3) selling the TDR Credits when willing buyers of increased residential density or commercial development capacity in the Manhattan Village Receiving Site are available.
2. The City agrees to allow the first twenty (20) development rights used by developers for additional residential and commercial development capacity in the Manhattan Village Receiving Site be those purchased by the Bank from the Sending Site Area prior to allowing development rights transferred in any other manner and from any other sending site.
3. In the event that TDR Credits are not purchased by the Bank from the Sending Site Area for sale into the Manhattan Village Receiving Site in sufficient number to fulfill the twenty (20) credit priority requirement provided in Section D.4 (above) by July 1, 2016, the City shall accept transfer of the



balance of the twenty (20) TDR Credit requirement from any other TDR Credits held by the Bank at that time into the Manhattan Village Receiving Site prior to accepting transfer in any other manner or from any other sending site.

4. Nothing herein shall be construed to require the County to deviate from the valuation, purchase, and sale process and procedures required in K.C.C. 21A.37.130 for sales of TDR Credits from the Bank.

**E. Notification Process**

The City, in consultation with the County, shall develop a process to notify the County when it has approved the use of TDR Credits in specific development projects in the Manhattan Village Receiving Site. For purposes of this Agreement, the City has “approved” the use of TDR Credits upon the earlier occurrence of: (a) issuance by the City’s Development Department of a building permit for a project using TDR Credits; or (b) when the City has entered into a contract or agreement which includes the use of TDR Credits in the Manhattan Village Receiving Site.

**F. Reporting**

1. The City shall report to the County within thirty (30) days after the end of each calendar quarter the number of TDR Credits that have been approved by the City for transfer into the Manhattan Village Receiving Site, and shall identify the specific development projects involved. In addition, the City shall cooperate with the County in providing the information required for the annual report as described in Section VI below.
2. The City shall reasonably track and record the Phase I and Phase II Amenity Investments (described in Section IV below) using generally accepted municipal accounting procedures.

**III. RESPONSIBILITIES AND POWERS OF KING COUNTY**

**A. Program Administration**

The County has adopted polices, regulations and administrative procedures to implement this Agreement to facilitate the purchase and sale of TDR Credits from the Sending Site Area. The County's obligations hereunder shall include:

1. In accordance with K.C.C. 21A.37, as hereafter amended, facilitate and promote the qualification and certification of properties located in the Sending Site Area;

2. Establish procedures to facilitate the sale of TDR Credits from private landowners and the Bank for transfer into the Manhattan Village Receiving Site;
3. Require the recording of a conservation easement on properties within the Sending Site Area as part of the process for transfer of development rights into the Manhattan Village Receiving Site consistent with the provisions of K.C.C. 21A.37, as hereafter amended.

**B. Operation of the TDR Bank**

1. The County shall work cooperatively with the City to identify, appraise, and purchase TDR Credits from potential properties in the Sending Site Area, except that the decision to appraise and purchase development rights shall be at the sole and absolute discretion of the County. The County shall provide the City with values and prices of TDR Credits that the County has appraised and/or purchased in a timely manner, or upon request of the City.
2. The County shall provide the City with funding for certain amenities as defined in K.C.C. 21A.37.150 and as provided herein for the purpose of mitigating and facilitating the increased development density in the Manhattan Village Receiving site contemplated in this Agreement.
3. Phase I and Phase II Amenity Investments shall be paid by the County to the City as provided in Section IV below.
4. Following Phase II Amenity Investment payments by the Bank to the City as provided in Section IV.E.2 below, revenue the Bank receives from the sales of TDR Credits for use in the Manhattan Village Receiving Site should be used to buy TDR credits from properties within the Sending Site Area in accordance with K.C.C. 21A.37.130.
5. Nothing herein shall be construed to require the County to deviate from the valuation, purchase, and sale process and procedures required in K.C.C. 21A.37.130, as hereafter amended, for sales of TDR Credits from the Bank.

**C. Program Evaluation**

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

**D. Public Amenity Investments**

The County shall provide amenity funds as Phase I and Phase II Amenity Investments to the City for the creation and acquisition of public open space, and park amenities according to the provisions in Section IV, Public Amenities Investment.

**E. Notification Process**

The County shall notify the City within thirty (30) days after the end of each calendar quarter the number of TDR Credits it has qualified and certified in the Sending Site Area identified in Section II. B.

**IV. PUBLIC AMENITY INVESTMENTS**

The County amenity funding shall be disbursed in two phases defined herein as Phase I and Phase II Amenity Investments. Attached as Exhibit C is an anticipated scope of work, work schedule, and budget for the use of amenity funds. The Parties may make modifications to Exhibit C by mutual written agreement; provided however, the budget may only be increased after approval by each party's respective council.

**A. Phase I Amenity Investment**

Consistent with adopted County appropriations and statutory provisions, the County shall provide amenity funds as a Phase I Amenity Investment in the amount of Three Hundred Fifty Thousand Dollars (\$350,000) to the City for the creation and acquisition of public open space and parks to facilitate increased density in the Manhattan Village Receiving Site, and in accordance with Exhibit D. The Phase I Amenity Investment shall be disbursed according to Section IV.E.1 below.

**B. County Fund Sources; Contracting**

The Phase I Amenity Investment is authorized in King County's 2007 Budget, Ordinance 15652. The Phase I Amenity Investment shall only be used by the City as provided in Section IV.D below. Unless otherwise required by statutory restrictions on such funds and only where applicable, City contracting and procurement procedures shall be used for projects and acquisitions utilizing the Phase I Amenity Investment.

**C. Phase II Amenity Investment**

To further facilitate increased density in the Manhattan Village Receiving Site, the County shall provide a Phase II Amenity Investment to the City through the TDR Bank in accordance with Section IV.E.2., consistent with all applicable provisions of the King County Code. The Phase II Amenity Investment shall only be used for the creation and/or acquisition of public amenities consistent with Section IV.D. Unless otherwise required by statutory restrictions on such funds and only where applicable, City contracting procedures shall be used for projects and acquisitions utilizing the Phase II Amenity Investment.

**D. Eligible Amenities**

Consistent with restrictions provided in K.C.C. 26.12, Conservation Futures Tax (CFT) Levy for the expenditure of CFT funds, the City shall only use Phase I and II Amenity Investments for the creation and/or acquisition of amenities by satisfying one or more of the following criteria, as provided in K.C.C. 26.12.025, attached as Exhibit D and incorporated herein:

1. Parks, open space, gardens, or gateways;
2. Wildlife habitat;
3. Salmon habitat and aquatic resources;
4. Scenic resources;
5. Historic or Cultural Resources;
6. Urban passive-use natural area/greenbelt
7. Park, open space or natural corridor addition
8. Passive Recreation opportunity in area with unmet needs

**E. Funding of Amenities**

1. Phase I Amenity Investment. Thirty (30) days prior to the County's disbursement of funds, the City shall provide the County with an executed purchase and sale agreement provided by the City; upon receipt of the purchase and sale agreement, the County shall wire funds to an escrow account established for the acquisition at time of closing. In the event the transaction does not close the funds shall be returned to the County. The County shall not withhold or delay approval of a purchase, unless such purchase fails to meet the requirements of Section IV.D above. Any disapproval by the County shall include a written statement of the grounds for disapproval and the changes deemed necessary by the County.
2. Phase II Amenity Investment. As a Phase II Amenity investment by the County in the City, the Bank shall provide the City with funds equivalent to 25% of the sale price of each TDR Credit the Bank sells for use in a residential or commercial development project in the Manhattan Village Receiving Site, as provided in K.C.C. 21A.37.110(F). This method will create a stream of smaller amenity payments to the City as TDR Credits are sold. The funds will be provided by the Bank to the City within sixty (60) days of closing of TDR Credit sales, or by December 31 of the calendar year in which

the transaction closed, whichever is earlier. As a condition precedent to payment from the Bank to the City as a Phase II Amenity Investment, the City shall allow the Bank to sell TDR Credits for development in the Manhattan Village Receiving Site as provided in Chapter 18 of the Normandy Park Municipal Code.

*For example, if the Bank purchased 20 TDR Credits in 2013 for the appraised price of \$40,000 each, and later sold 15 of these TDR Credits to a Manhattan Village Receiving Site developer in 2014 for \$40,000 each, the Bank shall pay the City \$150,000 or \$10,000 per TDR Credit sold within sixty days of the close of the sale, or by December 31 of the calendar year in which the transaction closed, whichever is earlier.*

3. Other Funding. In addition to the provisions for public amenities under this Section IV, the County shall, while this Agreement is in effect, consider funding additional amenity projects, including funding from other sources within the Manhattan Village Sub Area by engaging the City in discussions.

**F. Funding is Additional**

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

**G. Funding Limitations**

Notwithstanding any provision in this Agreement to the contrary, nothing herein shall be construed as a commitment by the County to provide additional amenity funding, nor shall any amenity payment exceed existing appropriations. To the extent the funds provided by the County in the Phase I and Phase II Amenity Investments remain unspent by the City on the required improvements and acquisitions contemplated in this Agreement after five (5) years from the date of the transfer of such funds, those funds plus interest shall be returned to the County, unless the Parties have otherwise agreed in writing to direct the funds to alternate amenities.

**V. DURATION**

**A. Duration**

This Agreement shall become effective on the last date it is executed by a Party and shall continue until such time as seventy-five (75) TDR Credits have been transferred into the Manhattan Village Receiving Site plus an additional twelve (12) months in accordance with Normandy Park Municipal Code Chapter 18 which describes the Transfer of Development Rights (TDR) program in

Manhattan Village, unless earlier terminated as provided in Section V.B.

**B. Termination**

Either party may terminate this Agreement upon 90 days' written notice to the other if: (1) the City's development regulations allowing the use of TDR Credits, or the provisions of the County's code provisions allowing transfer of development rights to cities, are held invalid by any court of competent jurisdiction in a final judgment no longer subject to appeal; or (2) the other party materially defaults in the performance of its obligations herein, and fails commence to cure such default within thirty (30) days after such party's receipt of written notice from the other party, or fails prosecute the cure to successful completion. Any termination of this Agreement shall affect the use of TDR Credits previously certified by the County for use in Manhattan 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 the Phase I Amenity Funds previously provided by the County under the terms hereof, nor the City's right to receive County funds, including Phase II Amenity Funds, for which the City shall have satisfied all conditions to disbursement prior to termination and, in the case of Phase II Amenity Funds, for which the County has sold TDR Credits from the Bank for use in a residential development in the Manhattan Village Receiving Site. In the event this Agreement is terminated by the County pursuant to Section VB.2. because the City has modified its municipal code and/or land use regulations in a manner that prohibits or materially frustrates the use of TDR Credits consistent with the Agreement, and the Phase I Amenity Investment as provided in Section IVE.1. has been disbursed to the City, the City shall refund to the County a percentage of the Phase I Amenity Investment equal to a percentage of the amount of TDR Credits available for transfer into the Manhattan Village Receiving Sites that have not been transferred.

**C. Extension and Future Funding Negotiations**

1. Pursuant to a mutual written agreement between the Parties, this Agreement may be extended beyond the date at which the limit of additional residential and commercial development capacity is reached in accordance with Chapter 18 of the Normandy Park Municipal Code.
2. Extension of this Agreement shall be considered contingent upon the availability of a combination of County, State, or Federal amenity funding incentives for the City.
3. To extend this Agreement, the City or the County shall make a written request to the other within the twelve (12) month period established in Section V.A., the request shall specify the proposed terms of the extension. The Parties must agree to the extension in writing by the termination date or this

Agreement will automatically terminate on the date specified in Section V.A. Notwithstanding anything in this Agreement to the contrary, it is acknowledged by the Parties that neither party has an obligation to renew or extend this Agreement.

4. Use of Future Amenity Funding. Additional funds provided by the County, if any, under Section IV.E.3. 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 that are consistent with County code provisions and the City's Manhattan Village Sub Area Plan. Any additional amenity funding provided under Section IV.E.3. is contingent on an appropriation by King County.
5. 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.

## **VI. 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**

The City and County shall cooperate to allow the County to publish a yearly report evaluating the progress of the Program. The report shall include at minimum an analysis of the factors listed below.

1. The number of sites qualified or certified by the County in the Sending Site Areas identified in Section II.B.;
2. The number and price of TDR Credits bought and sold by the TDR Bank;

3. The number and price of TDR Credits bought and sold through private transactions;
4. The County's marketing efforts, ease or difficulty in qualification or certification of sites and the purchasing or selling of TDR Credits;
5. The effect of conservation easements in preserving the rural character and conservation values of sending sites;
6. The amount (square feet and/or number of units) of additional residential and commercial development, outside of this Program, earned by developers using the City's additional development capacity for Manhattan Village pursuant to Chapter 18 of the Normandy Park Municipal Code;
7. The value and types of amenities in the Manhattan Village, outside of this Program, funded by developers in Manhattan Village;
8. The number of development projects in the Manhattan Village using the Program, the number of TDR Credits approved, the amount (square feet and/or number of units) of additional residential and/or commercial development approved using the Program, and the ease or difficulty in permitting projects using the Program; and
9. The balance of the Phase I and Phase II Amenity Funds and the City's use of the funds (i.e. types of amenity improvements), if any.

The County shall provide information pertaining to numbers 1 through 5 above; the City shall provide the County information pertaining to numbers 6 through 9. The County shall develop and distribute the yearly report to the City and may use the yearly report to the County Council as part of this evaluation.

## **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, with counsel acceptable to the City, 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, with counsel acceptable to the County, 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 City Manager or his/her designee, and for the County by the Director of the Water and Lands Resources Division of the King County Department of Natural Resources and Parks, 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 by written amendment and signed by both Parties. Except for modifications made to Exhibit C in accordance with Section IV., all other modifications to this Agreement shall be approved by each party's respective council.

[THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

In witness whereof, the Parties have executed this Agreement as of the \_\_\_ day of \_\_\_\_\_, 2014.

KING COUNTY

Approved as to Form:

By: \_\_\_\_\_  
Dow Constantine, King County Executive

By: \_\_\_\_\_  
Tim Barnes,  
Senior Deputy Prosecuting Attorney

Pursuant to Ordinance \_\_\_\_\_

THE CITY NORMANDY PARK

Approved as to Form:

By: \_\_\_\_\_  
Cherie Gibson, City Manager

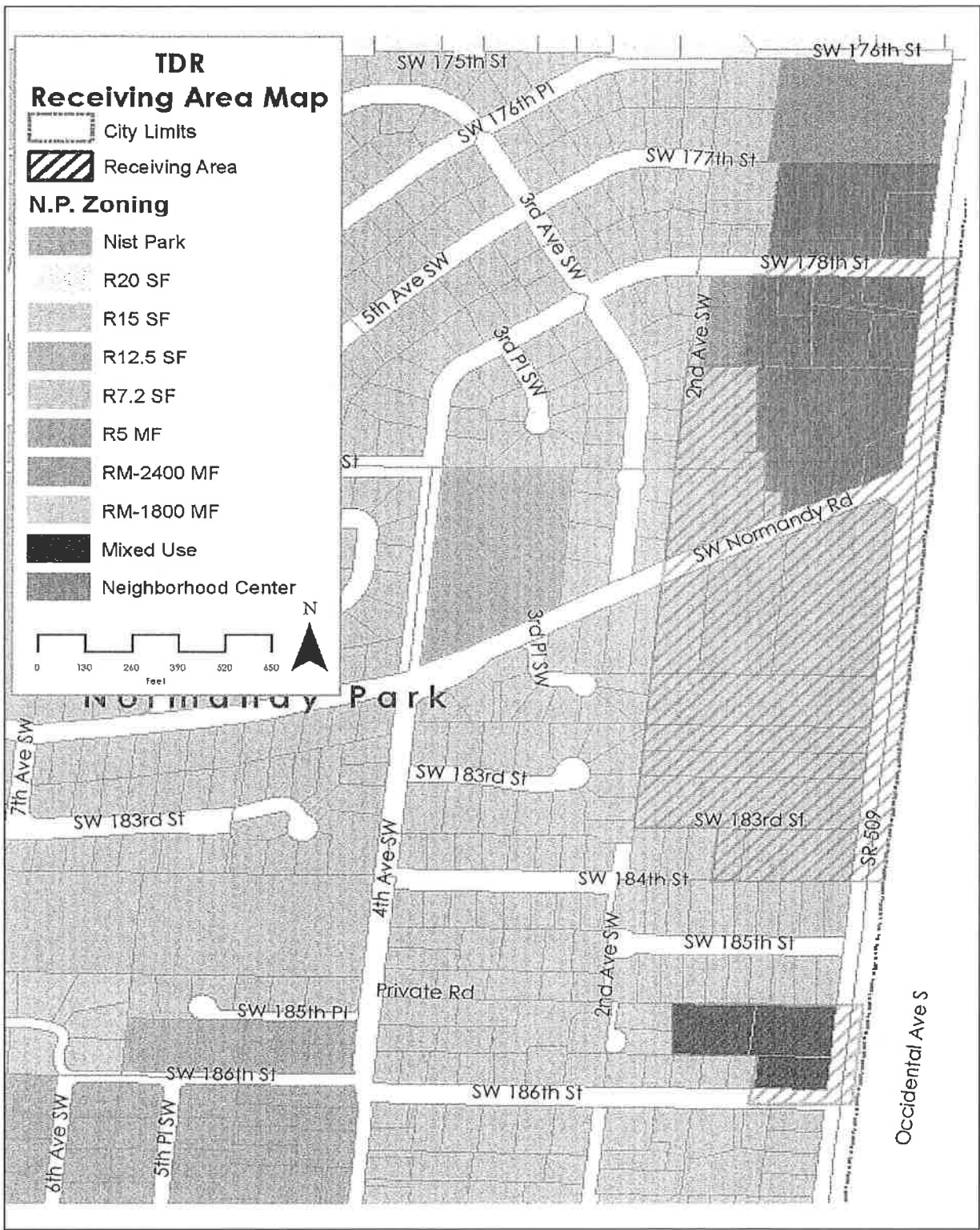
By: \_\_\_\_\_

Pursuant to City Council adoption  
on January 22<sup>nd</sup>, 2013



EXHIBIT A

Manhattan Village Sub Area TDR Receiving Sites



## EXHIBIT B

## TDR Density Incentive Table

TDR Incentive	Receiving Zone		
	NC	MU	RM-1800
Bonus Density/ (1) TDR	4,300 sq ft	2,500 sq ft or 2.5 units <sup>1</sup>	2,500 sq ft or 2.5 units
Bonus GFAR)	-	-	.25 GFAR
<sup>1</sup> Bonus units/square feet in the Mixed Use zone must be used for cottage housing developments that comply with the requirements of NPMC 18.52 – Cottage Housing			



## EXHIBIT C

### City of Normandy Park Anticipated scope of work, work schedule, and budget for the use of amenity funds

#### Phase I Amenity Funds: \$350,000

*Scope of Work:* Creation and acquisition of public open space and/or parks inside the City of Normandy Park for the purpose of mitigating a portion of the impacts associated with transferred density and to facilitate increased density in the Manhattan Village Receiving Site. This may include the City's acquisition of fee simple interest to a specific property, or a less than fee simple interest acquisition associated with certain properties. A less than fee simple interest acquisition may include a conservation easement.

*Work Schedule:*

- June 2014 – June 2015: The City's Parks and Community Development Departments will together identify two or three priority open space or park properties, owned by potential willing sellers, to apply the Phase I Amenity funds towards. The City will ensure the identified properties adhere to the eligibility criteria in Section IV.D and Exhibit E, and inform the County as to the specific properties it is pursuing.
- June 2015 – September 2015: The City will complete due diligence and inspections on one or more of these properties.
- September 2015 – December 2015: The City will make offers to one or more of the landowners of one or more of these properties for a fee simple interest acquisition or less than fee simple interest acquisition.
- January 2016 – March 2016: The City will negotiate offer(s), execute purchase and sale agreement(s), enter escrow and close on acquisition(s) that encompass the use of the \$350,000 Amenity Funds. Thirty (30) days prior to the County's disbursement of funds, the City shall provide the County with an executed purchase and sale agreement(s); upon receipt of the purchase and sale agreement, the County will wire funds to an escrow account established for the acquisition at time of closing.
- The dates established within this work schedule may be modified with the consensus of the County and the City. It is understood that the intent of this schedule is to provide for a timely expenditure of the phase 1 amenity funds. If the City is actively pursuing negotiation on acquisition, it is expected that the County will provide additional flexibility on timing.

*Budget:* \$350,000



**Phase II Amenity Funds:** Total amount is to be determined, and provided to the City as the Bank sells TDR credits for increased residential or commercial development capacity in the Manhattan Village Receiving Site. The Phase II Amenity funding amount shall be equivalent to 25% of the sale price of each TDR Credit sold by the Bank.

The Phase II Amenity funds will be provided by the Bank to the City within sixty (60) days of closing of TDR Credit sales, or by December 31 of the Calendar year in which the transaction closed, whichever is earlier. This method will create a stream of smaller amenity payments from the County to the City as TDR Credits are sold.

*Scope of Work:* Creation and acquisition of public open space and/or parks inside the City of Normandy Park for the purpose of mitigating a portion of the impacts associated with transferred density and to facilitate increased density in the Manhattan Village Receiving Site. This may include the City's acquisition of fee simple interest to a specific property, or a less than fee simple interest acquisition associated with certain properties. A less than fee simple interest acquisition may include a conservation easement.

*Work Schedule:*

- Once the first TDR credit(s) is/are sold by the Bank into Manhattan Village, the City's Parks and Community Development Departments will together identify priority open space or park properties, owned by potential willing sellers, to apply the current and future stream of Phase II Amenity funds towards. The City will ensure the identified properties adhere to the eligibility criteria in Section IV.D and Exhibit E of the TDR Interlocal Agreement.
- Following identification of these properties the City will complete the following acquisition steps in a timely manner:
  - due diligence and inspections of properties;
  - make offers to one or more of the landowners of these properties for a fee simple interest acquisition or less than fee simple interest acquisition;
  - negotiate offer(s), execute purchase and sale agreement(s), enter escrow and close on acquisition(s) that encompass the use of the Phase II Amenity Funds.

*Budget:* To Be Determined

**EXHIBIT D**

**K.C.C. 26.12.025 – Conservation Futures Tax (CFT) Open Space Criteria**

**K.C.C. Chapter 26.12**

**26.12.025 Open space criteria.** In making an annual allocation of conservation futures tax levy funds, the county shall consider the following criteria: wildlife habitat or rare plant reserve; salmon habitat and aquatic resources; scenic resources; community separator; historic or cultural resources; urban passive-use natural area or greenbelt; park or open space system addition; and transfer of development rights program implementation. Additional criteria may include: passive recreation; education/interpretive opportunity; threat of loss of open space resources; ownership complexity; partnerships; stewardship and maintenance; and any other criteria consistent with RCW 84.34.020. (Ord. 13717 § 4, 2000).

2007 Urban TDR Program Conservation Futures (CFT) Project Description

**Fund:** 3151

**Project Number(s):** 315620, and 315600

**Project Name:** Urban TDR Open Space Acquisition

**Project Description:** This programmatic project is intended for the purchase of open space in a city or cities that participate in the King County Transfer of Development Rights (TDR) Program. This project would not require additional matching funds on the part of the city, as the benefits of the match are captured in the preservation of rural open space that does not need to be purchased with CFT or other funds.

**Amount of Disbursement to City of Normandy Park:** \$350,000