



CONTRACT FACE SHEET

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Relationship to Original: [] Amendment [] MOU [] Cancellation [x] New [] Change Order [] Release [] Correspondence [] Renewal [] Initial [] Retainage [] Lien [] Working
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*JDE PO Number: /
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Project Description: Regional Transfer of Development Rights re Bel-Red Subarea
KC Recording Number: /
Vendor or Parcel Number: 90029
File Location: 09.607

• Denotes Mandatory Fields. If referring to Retainage, please indicate the Termination Date same as the Contract Termination Date.

DEPT: CA

Face Sheet Date 09.15.2009 CJ JDE N/A
Scan/Index Date 9-16-2009 MT J ECM

CR# 44958 DATE 09.15.09 LOC 09.607
Res 7954

**AN INTERLOCAL AGREEMENT FOR THE IMPLEMENTATION OF A
REGIONAL PROGRAM TO TRANSFER DEVELOPMENT RIGHTS FROM
RURAL UNINCORPORATED KING COUNTY TO THE BEL-RED SUBAREA
IN THE CITY OF BELLEVUE**

This Agreement is hereby entered into by King County, a home rule charter county of the State of Washington, herein after referred as the "County," and The City of Bellevue, a municipal corporation of the State of Washington, herein referred to as the "City."

RECITALS

WHEREAS, the Washington State Growth Management Act (GMA), RCW 36.70A, directs development 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 forestry, agricultural, wildlife habitat and scenic resources 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 Program which authorizes incorporated areas to receive development rights transferred from rural and resource unincorporated areas; and

WHEREAS, by Bellevue Ordinance 5858 the City adopted the Bel-Red Subarea Plan to actively consider the Bel-Red Subarea as a potential receiving site for regional

Transfer of Development Rights, as a means to achieve conservation of rural resource lands outside the Countywide Urban Growth Boundary; and

WHEREAS, the Bel-Red Subarea Plan calls for density incentives for residential and commercial development, and to increase public amenities to improve the pedestrian, park, and transit oriented development pattern in the Bel-Red Corridor; and

WHEREAS, by Bellevue Ordinance 5874 the City amended its Land Use Code by adopting a new Part 20.25D which established regulations, standards, and design guidelines to implement the Bel-Red Subarea Plan and permitted the use of Regional Transfer of Development Rights from rural King County to increase the development capacity of properties in the Bel-Red Corridor under certain conditions; and

WHEREAS, the County in its 2007 Budget, Ordinance 15652, appropriated funding to provide cities with amenity payments which 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 Bel-Red Subarea, 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 Regional Transfer of Development Rights (TDR) Agreement in which the City agrees to take additional development to preserve rural and resource land and the County invests in receiving area amenities; and

WHEREAS, the Washington State Legislature recently affirmed the value of Regional TDR programs by adopting SSHB 1172; 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, a commitment of a minimum number of cities in the Region agreeing to take additional development to preserve rural and resource lands, and the interests of the parties; and

WHEREAS, this Agreement will act to encourage other cities in the 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 (hereafter the “Program”) to transfer development rights (hereafter referred to as “rural TDR credits”) from unincorporated rural and resource sending areas of the County, as depicted in Exhibit A, into the Bel-Red Subarea in the City, as depicted in Exhibit B, according to the provisions described below. Furthermore, the Program seeks to establish a marketplace for rural TDR credits that will generate on-going preservation of rural and resource lands deemed important to the City of Bellevue through the creation of a revolving fund using the King County TDR Bank.

II. RESPONSIBILITIES AND POWERS OF THE CITY OF BELLEVUE

A. City Ordinances

The City has adopted Ordinance 5874 to implement the Program, which Ordinance has, among other provisions:

1. Amended the Bellevue Land Use Code to include Part 20.25D, which establishes regulations, standards, and design guidelines for development within the Bel-Red Subarea;
2. Allowed for the Bel-Red Subarea and Land Use Districts, identified and described in Exhibit B, to act as receiving areas for rural TDR credits that originate from sending sites located in King County’s unincorporated rural and resource areas under the terms of this Program;
3. Established the Bel-Red Floor Area Ratio (FAR) Amenity Incentive System, attached as Exhibit C, which allows Bel-Red development projects to exceed base FAR and base building height through the use of rural TDR credits;
4. Limited the amount of rural TDR credits that could be used within the Bel-Red Subarea to a total of 75 credits;
5. Set the level of additional development capacity (“Bonus Building Area”) that may be permitted on receiving sites in the Bel-Red Subarea for each rural TDR credit at 1,333 square feet per TDR credit or at a rate otherwise established through this Agreement;

6. Established this Agreement as a source for determining the Bonus Building Area, maximum amount of TDR credits to be used, and other details of the City's participation in the Program;
7. Established and modified development standards and provisions for public amenities.

The City shall take any necessary steps to allow the City to receive and track the amenity payments described in this Agreement.

B. TDR Sending Site Areas

The City has identified the following "Sending Site Areas," described below and depicted in Exhibit A, from which rural TDR credits may be used for Bonus Building Area in the Bel-Red Subarea. Properties within these Sending Site Areas must first be "qualified" and then "certified" in accordance with the County's TDR Program (K.C.C. 21A.37).

1. The Greenway Focus Area which is composed of the following three Sending Site Areas: the Lower Snoqualmie Farm and Forest Area, the I-90 / SR 18 Area, and the Mount Si to Rattlesnake Mountain Connector Area;
2. The White River Focus Area which is composed of the following three Sending Site Areas: the Mud Mountain – Grass Mountain Area, the Highway 410 Area, and the Greenwater Area.

C. Rural TDR Credit Limit

As an alternative to the limit of 75 rural TDR credits established in the Bel-Red Land Use Code 20.25D.090, the total Bonus Building Area in the Bel-Red Subarea and Land Use Districts allowed with the use of rural TDR credits under this Agreement shall be limited to either 75 rural TDR credits or 100,000 square feet of Bonus Building Area earned through the use of rural TDR credits, whichever is arrived at first.

D. TDR Credit Bonus Building Area

The base level of Bonus Building Area that may be permitted on receiving sites in the Bel-Red Subarea for each rural TDR credit is 1,333 square feet as established in Bel-Red Land Use Code 20.25D.090. For TDR credits purchased either from the King County TDR Bank or a private seller in a Sending Site Area for a purchase price in excess of \$20,000 per credit, the City shall require an

alternative method of calculating the amount of Bonus Building Area allowed for each TDR credit as follows and according to the examples shown below:

TDR credits that originate from properties in the Sending Site Areas, or TDR credits from the King County TDR Bank, shall earn Bonus Building Area equal to the appraised TDR credit value divided by \$14/sf. In the event the TDR credit was purchased directly from the Sending Site Area landowner, or purchased from the King County TDR Bank at a price in excess of its appraised value, the purchase price of the TDR credit may be used for this calculation in lieu of an appraisal of the TDR credit.

Example #1: A certified Sending Site Area landowner sells a TDR credit to a Bel-Red Subarea developer for \$40,000 without aid of an appraisal. The TDR credit shall equal 2,857 square feet of Bonus Building Area in the Bel-Red Subarea (i.e. \$40,000 divided by \$14/sf). Any TDR credit that sells for more than \$40,000 by a Sending Site Area landowner shall be supported by an appraisal conducted by a state certified active Member of the Appraisal Institute (MAI). The appraisal report shall establish the fair market value of the TDR credit as it applies to the sending site with a date of value that is within one year of the TDR credit sale; said appraisal shall include a before/after valuation of the sending site and encompass all TDR credits that were certified on the site (i.e. if the sending site landowner was allocated more than one certified credit, the appraisal report must include all of the credits in the valuation, not just the credit or credits being sold); the appraised TDR credit value shall be used for the calculation to determine Bonus Building Area.

Example #2: A Bel-Red Subarea developer buys and certifies a property in the Sending Site Area. The TDR credit(s) shall be valued by a state certified active Member of the Appraisal Institute (MAI). The appraisal report shall establish the fair market value of the TDR credit as it applies to the sending site with a date of value that is within one year of the TDR credit sale; said appraisal shall include a before/after valuation of the sending site and encompass all TDR credits that were certified on the site (i.e. if the sending site landowner was allocated more than one certified credit, the appraisal report must include all of the credits in the valuation, not just the credit or credits being sold). If the certified appraisal indicates each TDR credit is valued at \$30,000, the TDR credit shall equal 2,143 square feet of Bonus Building Area in the Bel-Red Subarea (i.e. \$30,000 divided by \$14/sf).

Example #3: The King County TDR Bank buys a TDR credit from a Sending Site Area landowner for \$60,000 based on an appraisal by a state certified active Member of the Appraisal Institute (K.C.C. 21A.37 requires the Bank to pay fair market value for TDR credits). The Bank sells a TDR credit to a Bel-

Red Subarea developer for \$60,000. The TDR credit shall equal 4,286 square feet of Bonus Building Area in the Bel-Red Subarea (i.e. \$60,000 divided by \$14/sf). The TDR Bank shall sell TDR credits in accordance with K.C.C. 21A.37; the City shall not accept TDR credits into the Bel-Red Subarea from the TDR Bank if the price per credit exceeds 120% of the original TDR Bank purchase price.

Nothing herein shall be construed to require the County to deviate from the valuation method required in KCC 21A.37.130A for sales of credits from the King County TDR Bank.

E. King County TDR Bank

The City agrees that the King County TDR Bank (hereafter the “Bank”) will be used as a revolving fund to sell rural TDR credits for Bel-Red development, and the County shall subsequently use proceeds from such TDR credit sales to buy development rights from the Sending Site Areas. The City understands the Bank will play an important role to facilitate the City-County TDR market by: (1) buying development rights up-front from willing private landowners, (2) holding the rural TDR credits, and (3) selling the rural TDR credits when a willing buyer of Bonus Building Area in the Bel-Red Subarea is available.

The City agrees that the first 37 of the 75 total rural TDR credits, or the first 50,000 square feet of the total 100,000 square feet Bonus Building Area, used in the Program (whichever occurs first) shall be with TDR credits held by the Bank. These Bank TDR credits shall have originated from forestlands and important viewshed lands such as the recently certified properties located in the Raging River Headwaters in the Mountains to Sound Greenway. Revenues the Bank receives from the sale of these TDR credits, and any other TDR credits purchased for use in the Program for Bel-Red development, shall be used to create a revolving fund for land protection in accordance with Section III B.

F. County Acknowledgment; Modifications

The County acknowledges that the provisions of Ordinances 5858 and 5874 are consistent with the intent and purposes of the Program.

G. Notification Process

The City, in consultation with the County, shall develop a process to notify the County when it has approved the use of rural TDR credits in a specific project in the Bel-Red Subarea. For purposes of this Agreement, “approved” occurs at the earlier of (a) issuance by the City’s Development Services Department of the first building permit for a project using rural TDR credits; or (b) a developer’s irrevocable commitment to use the rural TDR credits for a specific project.

H. Report

The City shall report to the County within thirty (30) days after the end of each calendar quarter the number of rural TDR credits that have been approved by the City for projects in the Bel-Red Subarea, and shall identify the specific projects involved. In addition, the City shall cooperate the County in providing the information required for the annual report as described in Section VI.

III. RESPONSIBILITIES AND POWERS OF KING COUNTY

A. Program Administration

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

- 1) In accordance with K.C.C. 21A.37, facilitate and promote the TDR qualification and certification of properties located in Sending Site Areas;
- 2) Establish procedures to facilitate the sale of rural TDR credits from private landowners and the Bank;
- 3) Establish procedures to require, maintain and enforce deed restrictions on unincorporated rural and resource sending sites from which rural TDR credits are bought, in order to prohibit those sites from being developed in violation of the deed restrictions.

B. Operation of the TDR Bank

The County agrees to use revenues the Bank receives from the sale of TDR credits for Bel-Red development to create a revolving fund to acquire development rights in the future from the Sending Site Areas.

The County shall make its best efforts to identify and appraise properties

in the Sending Site Areas for potential rural TDR credit purchase by the Bank and provide the City with representative price ranges of the value of such rural TDR credits that the County has appraised and/or purchased.

C. Program Evaluation

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

D. Public Amenity Payments

The County shall provide funds as amenity payments to the City for the creation and acquisition of public open space, parks and stream amenities in the Bel-Red Subarea 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 rural TDR credits it has qualified and certified in the Sending Site Areas identified in Subsection II B.

IV. PUBLIC AMENITIES INVESTMENT

A. Initial Investment

Consistent with adopted County appropriations and statutory restrictions, the County shall provide funds as an initial investment in the amount of \$750,000 to the City for the creation and acquisition of public open space, parks or stream amenities in the Bel-Red Subarea to mitigate a portion of the impacts associated with transferred density and to encourage increased density in the Bel-Red Subarea. The \$750,000 will be disbursed according to Subsection IV D. The initial \$750,000 payment shall be referred to as the "Initial Amenity Funds."

B. County Fund Sources; Contracting

The source of the Initial Amenity Funds is authorized in King County's 2007 Budget, Ordinance 15652. The Initial Amenity Funds shall only be spent on the creation and/or acquisition of public amenities in the Bel-Red Subarea

consistent with Subsection IV C. Unless otherwise required by statutory restrictions on such funds and where applicable, City contracting procedures will be used for amenity projects utilizing the Initial Amenity Funds.

C. Eligible Amenities.

The City shall only spend Initial Amenity Funds for the creation and/or acquisition of amenities in the Bel-Red Subarea indicated in this Subsection IV C, and provided that City expenditures shall be consistent with statutory restrictions in K.C.C. 26.12 of the County Conservation Futures Tax (CFT) Levy funds. The funds may only be used for the creation, improvement and/or acquisition of amenities with the following Open Space Resource Criteria as specified by one or more of the following Criteria described below:

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

D. Funding of Amenities

1. Initial Amenity Funds. After adoption of this Agreement, the County shall provide \$750,000 to the City for the acquisition of open space property in the Bel-Red Subarea. Thirty days prior to the County's disbursement of funds, the City shall provide the County with: a project description, time schedule, and budget for the City's open space acquisition. The County shall disburse funds for the acquisition contingent upon a signed purchase and sale agreement provided by the City; 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 or the concept plan and scope of work so long as such purchase or work meets the restrictions of Section IV.C 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. Priority for other Funding. In addition to the provisions for public amenities under this Subsection IV, the County shall, while this Program is in effect,

consider granting priority to amenity projects within the Bel-Red Subarea to receive funding from other sources to increase amenities in the area.

3. Future Amenity Funding. Prior to the transfer of all 75 rural TDR credits for use in the Bel-Red Subarea, or all 100,000 square feet of bonus building area has been approved for use in the Bel-Red Subarea with rural TDR credits, the County and the City may consider future amenity fund payments to extend the Program according to Section V C, beyond the limits set forth in Section II C.

E. Funding is Additional

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

V. DURATION

A. Duration

This Regional TDR Agreement shall become effective on the date it is signed by all parties and shall continue until all 75 rural TDR credits have been used for development in the Bel-Red Subarea, or 100,000 square feet of bonus building area has been used for development in the Bel-Red Subarea with the use of rural TDR credits, unless earlier terminated as provided in Section V B.

B. Termination

Either party may terminate this Agreement upon 180 days' written notice to the other if: (1) the City's development regulations allowing the use of rural TDR credits, or the provisions of the County's development regulations 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 shall materially default in the performance of its obligations herein, and shall not cure such default within thirty (30) days' notice after such party's receipt of written notice thereof from the City or County, as the case may be. Any termination of this Agreement shall affect the use of rural TDR credits previously certified by the County for use in the Bel-Red Subarea 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 Initial Amenity Funds previously provided by the County under the terms hereof, nor the City's right to receive County funds for which the City shall have satisfied all conditions to disbursement prior to termination. In the event this Agreement is terminated by the County pursuant to Section V(B)(2) because the

City has modified its Land Use Code in a manner that prohibits or effectively prohibits the use of rural TDRs consistent with the Program, and the Initial Amenity Funds provided in Section VI(D)(1) have been disbursed to the City, the City shall refund to the County a percentage of the Initial Amenity Funds equal to the percentage of the 100,000 square feet of Bonus Building Area that has not been transferred into the Bel-Red Subarea pursuant to the Program.

C. Extension

Pursuant to a mutual written agreement between the parties, this Agreement may be extended beyond the date at which all 75 rural TDR credits have been transferred for development in the Bel-Red Subarea, or beyond the date at which all 100,000 square feet of bonus building area has been used for development in the Bel-Red Subarea with the use of rural TDR credits.

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, and a commitment of at least 5 cities in the Region agreeing to take additional development capacity to preserve rural and resource lands in concert with Regional TDR legislation passed by the 2009 WA State Legislature and codified in RCW Chapter 43.362.

To extend this Agreement, the City or the County shall make a written request to the other not less than sixty (60) days prior to the end of this Agreement. The request shall specify the proposed terms of the extension. The parties must agree to the extension in writing by the termination date or the agreement will lapse. 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.

1. Extension - Future Amenity Funding. Subject to available budget authority, the County through the King County Executive, and the City will negotiate in good faith to determine the amount of future amenity funds to be provided by the County to the City, provided that notwithstanding any other provision of this Agreement nothing herein shall obligate the County to any funding beyond the initial \$750,000, including ongoing programs or projects partially funded. The level of additional County amenity funding above the initial \$750,000 authorized, shall be determined by the County in cooperation with the City based on the number and cost of rural TDR credits accepted for use in permitted projects inside the Bel-Red Subarea during the initial term of this Agreement.

Future amenity funding from the County above the initial \$750,000 authorized in this Agreement shall be contingent on appropriations adopted by the

Metropolitan King County Council,

2. Use of Future Amenity Funding. Additional funds provided by the County under Section V shall be expended by the City only for amenities mutually approved by the City and County. The County shall not unreasonably withhold approval of amenities consistent with County statutory restrictions and the City's Bel-Red Subarea Plan.

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 rural TDR credits bought and sold by the TDR Bank;
- 3) the number and price of rural 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 rural TDR credits;

- 5) the effect of deed restrictions in preserving the rural character and conservation values of sending sites;
- 6) the square foot bonus building area, outside of this Program, earned by developers using the City's Bel-Red FAR Amenity Incentive System;
- 7) the value and types of amenities in the Bel-Red Subarea, outside of this Program, funded by developers using the City's Bel-Red FAR Amenity Incentive System;
- 8) the number of development projects in the Bel-Red Subarea using the Program, the number of rural TDR credits approved, the square foot bonus building area approved for development using the Program, and the ease or difficulty in permitting projects using the Program; and
- 9) the remaining balance of the Initial Amenity Fund and the City's use of the funds (i.e. types of amenity improvements).

The County shall provide information pertaining to numbers 1 through 5; 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 the same at its sole cost and expense, provided that the City retains the right to participate in said suit if any principle of governmental or public law is involved, and if final judgment be rendered against the City and its officers, agents, and employees, or any of them, or jointly against the City and County and their respective officers, agents, and employees, or any of them, the County shall satisfy the same.

B. City Negligence

The City shall indemnify and hold harmless the County and its officers, agents and employees or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the City, its officers, agents, and employees, or any of them, in performing obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or

damage is brought against the County, the City shall defend the same at its sole cost and expense, provided that the County retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the County and its officers, agents, employees, or any of them, or jointly against the City and County and their respective officers, agents, and employees or any of them, the City shall satisfy the same.

C. Concurrent Negligence

The City and the County acknowledge and agree that if such claims, actions, suits, liability, loss, costs, expenses and damages are caused by or result from the concurrent negligence of the City, its agents, employees, and/or officers and the County, its agents, employees, and/or officers, this section shall be valid and enforceable only to the extent of the negligence of each party, its agents, employees and/or officers.

VIII GENERAL TERMS

A. Administration

This Agreement shall be administered for the City by the Director of the Development Services Department 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 in writing and signed by both parties.

In witness whereof, the parties have executed this Agreement as of the 15th day of September, 2009.

KING COUNTY

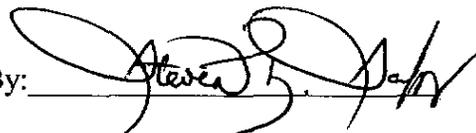
By: 

Pursuant to Ordinance 16643

Approved as to Form:

By: 
Senior Deputy Prosecuting Attorney
T. BARNES

THE CITY OF BELLEVUE

By: 
Pursuant to Ordinance 7954
Res.

Approved as to Form:
Lori M. Riordan, City Attorney

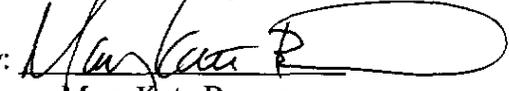
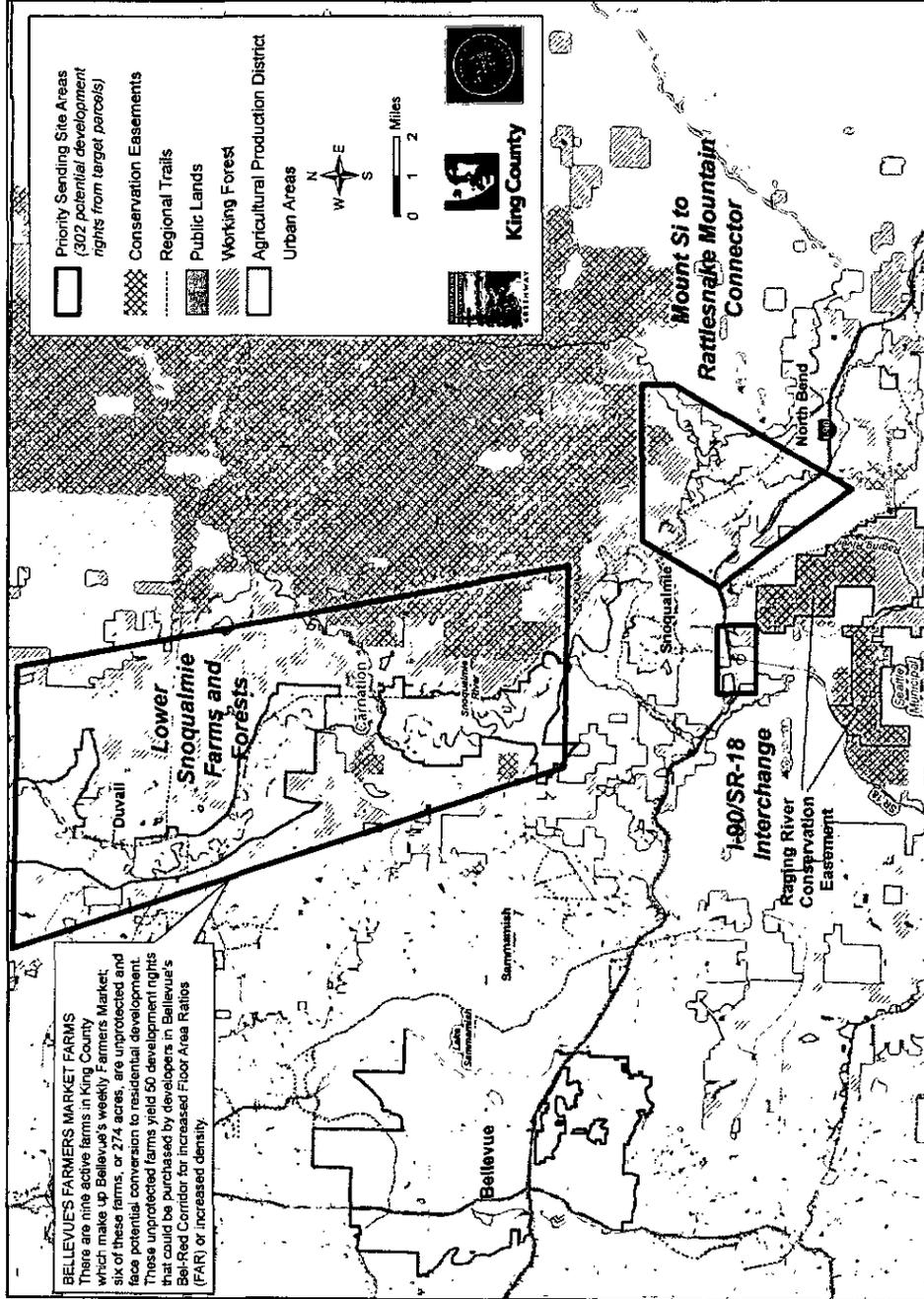
By: 
Mary Kate Berens
Deputy City Attorney

EXHIBIT A:
Regional TDR Sending Site Areas

GREENWAY FOCUS AREA



White River Focus Area

Priority Sending Site Areas

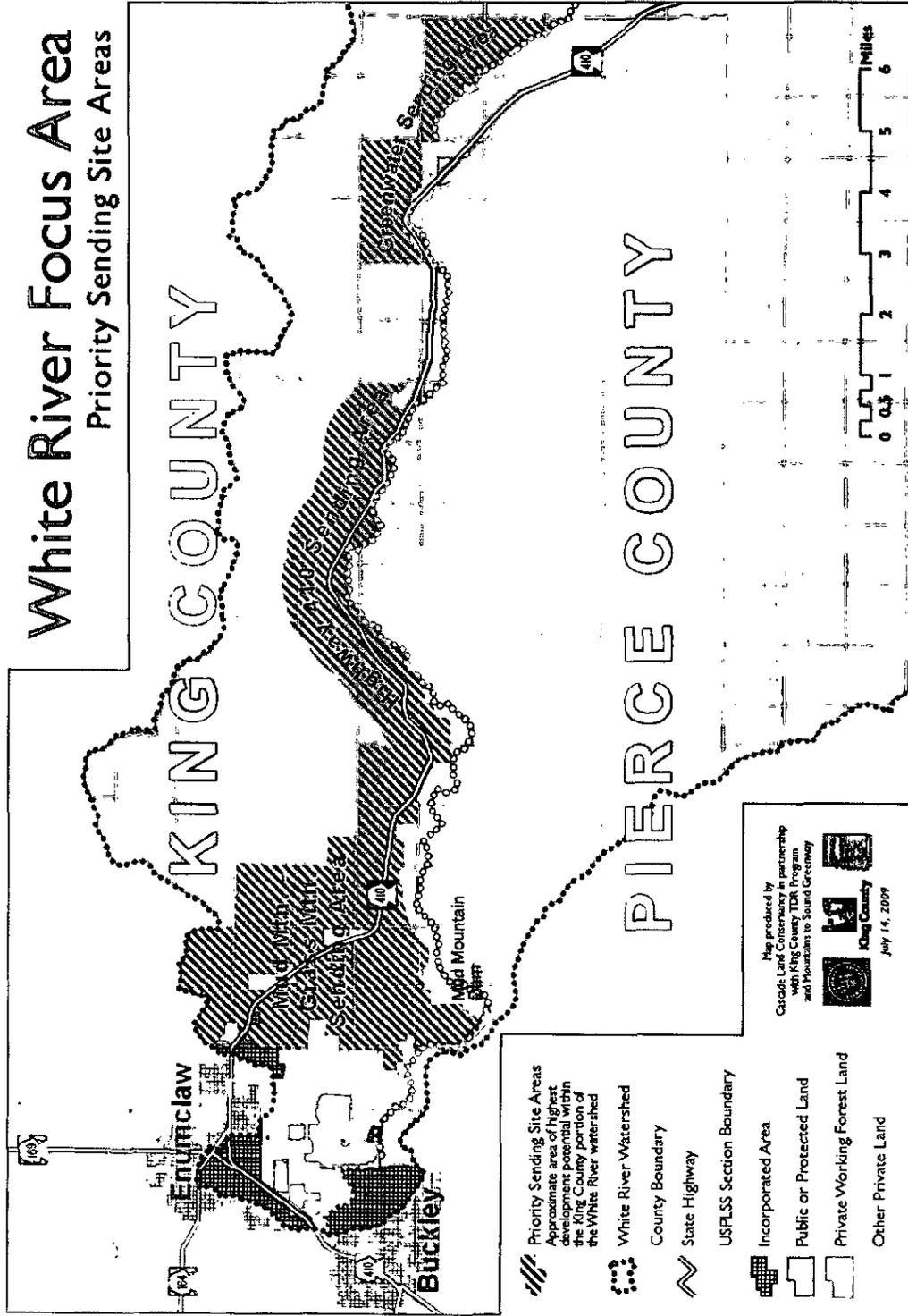


EXHIBIT C:
 Excerpts from Bel-Red FAR Amenity Incentive System.
 For full text of this section, see Bellevue LUC 20.25D.090

Example of Tiered FAR Amenity Allocation

Figure 20.25D.090.C

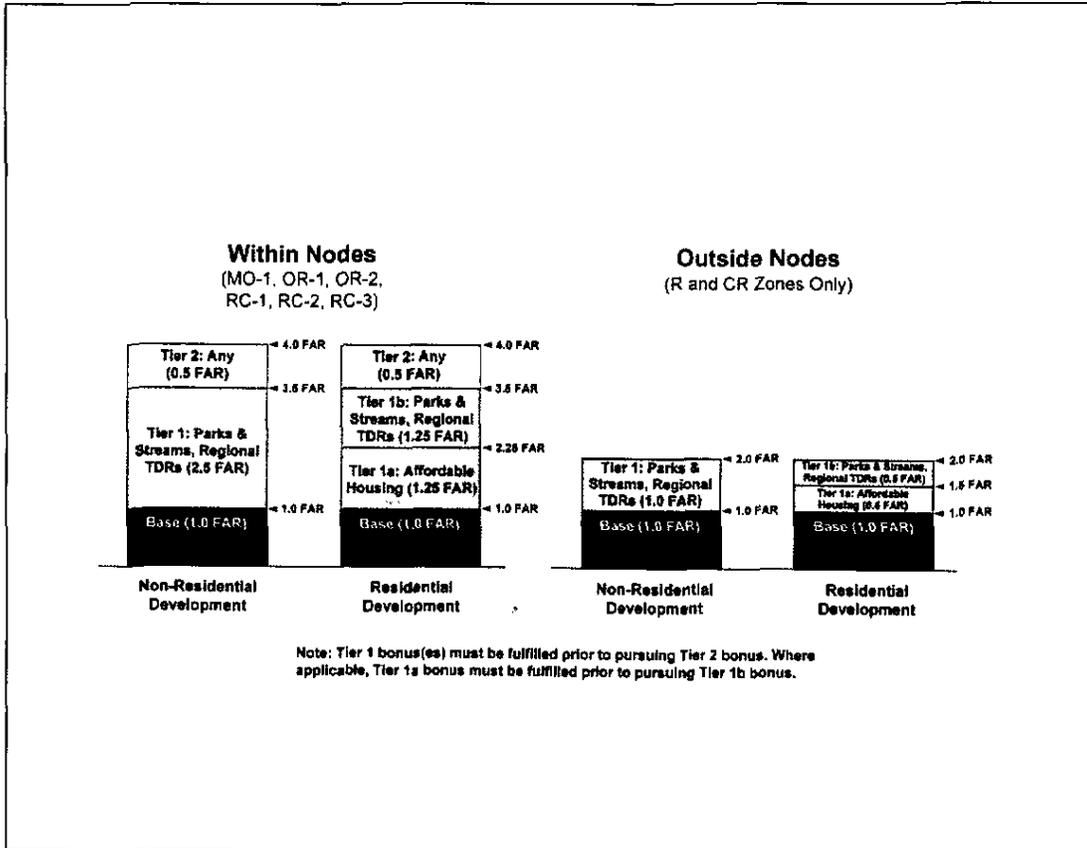


Chart 20.25D.090.C FAR Amenity Incentive System

FAR AMENITY STANDARDS		
AMENITY (1)	APPLICABLE ZONES AND BONUS (3)	DESIGN CRITERIA
	MO-1, OR-1, OR-2, RC-1, RC-2, RC-3, CR, R	
TIER 1b		
<p>6. REGIONAL TRANSFER OF DEVELOPMENT RIGHTS (TDRs) Transfer of development rights to designated Bel-Red areas that achieve conservation of rural resource lands outside the Countywide Urban Growth Boundary.</p>	<p>1,333 sf bonus building area per TDR credit, or per Bellevue-King County TDR Interlocal Agreement as originally adopted or subsequently amended.</p>	<p>1. TDR credits defined in accordance with the King County TDR Program as approved or subsequently amended by the city pursuant to the Bellevue-King County TDR Interlocal Agreement. 2. TDR credits for use in the entire Bel-Red Subarea is limited to 75.</p>

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 7954

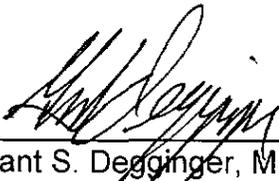
A RESOLUTION authorizing execution of an Interlocal Agreement with King County regarding implementation of a regional transferable development rights program.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Manager or his designee is authorized to execute the Interlocal Agreement for the Implementation of a Regional Program to Transfer Development Rights from Rural Unincorporated King County to the Bel-Red Subarea in the City of Bellevue, a copy of which Interlocal Agreement has been given Clerk's Receiving No. 44958.

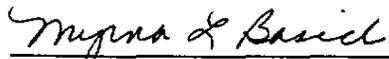
Passed by the City Council this 20th day of July, 2009, and signed in authentication of its passage this 20th day of July, 2009.

(SEAL)



Grant S. Degginger, Mayor

Attest:



Myrna L. Basich, City Clerk

Resolution 7954
page 4
item 11(c)

Agenda

①

City Council

Regular Session

MONDAY
July 20, 2009

8:00 – 10:00 p.m.
Council Chambers (1E-126)

Page

1. Call to Order
2. Roll Call, Flag Salute
3. Communications: Written and Oral
Note: Three-minute limit per person, or five minutes if representing the official position of a recognized community organization. Maximum of three persons are permitted to speak to each side of any one topic. Additional presentations may be heard at Agenda Item 13, including three additional persons speaking to topics heard at Agenda Item 3.
4. Reports of Community Council, Boards and Commissions
5. Report of the City Manager
 - (a) Management Brief providing information on Neighbor Link NIS- 3 PCD
Cheryl Kuhn 5-1
6. Council Business and New Initiatives
7. Approval of the Agenda

City Council meetings are wheelchair accessible. American Sign language (ASL) interpretation is available upon request. Please phone 452-6805 at least 48 hours in advance. Assisted Listening Devices are also available upon request.



City of Bellevue

8. Consent Calendar

- | | | |
|---|-------|-------------|
| (a) Motion to award Bid No. 9131 for the replacement of the Public Safety Garage Vehicle Access Door at City Hall to Davis Door Services Inc., in the amount of \$42,869.25, as the lowest responsive and responsible bidder. | CIVIC | <u>8-1</u> |
| (b) Motion to approve payment of claims for the period June 13, 2009 through July 17, 2009 and payroll for the period June 1, 2009 through June 30, 2009. | FIN | <u>8-5</u> |
| (c) Resolution No. 7949 authorizing execution of a Memorandum of Understanding with the Bellevue Police Support Guild related to effects bargaining as a result of the City discontinuing dispatch services on June 30, 2009, and the attendant elimination of dispatch related positions and layoff of affected employees. | HR | <u>8-7</u> |
| (d) Resolution No. 7950 authorizing execution of a seven-year Network Service and Maintenance Agreement with the North East King County Regional Public Safety Communication Agency (NORCOM) for the provision of network and data center collocation services supporting NORCOM's regional communications center. | ITD | <u>8-11</u> |
| (e) Resolution No. 7951 authorizing execution of a Professional Services Agreement with Boxwood Architects, in the amount of \$148,792, for architectural, engineering and site design services for the Lewis Creek Park Picnic Area. | PARK | <u>8-15</u> |
| (f) Motion to award Change Order #1 for Bid No. 9118 to RC Zeigler Company Inc., for costs of up to \$26,000, for services and materials furnished over and above the original contract amount for the installation of playground covers at Lewis Creek Park. | PARK | <u>8-21</u> |
| (g) Resolution No. 7952 authorizing execution of a Consultant Agreement with David Evans and Associates, Inc., in an amount not to exceed \$537,310, | TRAN | <u>8-25</u> |

to develop the design and prepare the construction contract documents for the proposed pedestrian and bicycle improvements on 108th Avenue SE between Bellevue Way and I-90 (CIP Plan No. PW-W/B-71).

- | | | | |
|-----|---|------|-------------|
| (h) | Resolution No. 7953 authorizing execution of Amendment No. 1 to the Professional Services Agreement with HDR Engineering, in an amount not to exceed \$73,000, for engineering services for the Southridge, Kimberlee and Emerald Ridge Pump Station Rehabilitation (CIP Plan No. S-16). | UTIL | <u>8-33</u> |
| (i) | Motion to award Bid No. 9037 for Sanitary Sewer Rehabilitation – Main Street between 106 th Avenue NE and 107 th Avenue NE to Northwest Construction, in the amount of \$702,706.00, as the lowest responsive and responsible bidder (CIP Plan Nos. S-24 and S-30). | UTIL | <u>8-39</u> |

9. Public Hearings

10. Land Use

- | | | | |
|-----|---|-------------------------------|-------------|
| (a) | *Consideration of the application of St. Andrews Housing Group to rezone a 3.501 acre of tract land located at 4228 Factoria Boulevard SE from R-5 to R-30. The rezone is requested in order to increase the allowed residential density and to facilitate an affordable housing project. Rezoning to R-30 would allow a four-story 39,000 square foot residential building which would include 41 studio, one-bedroom and two bedroom dwelling units, one manager’s unit and one level of underground parking. | DEV
SRVCS
Carol Helland | <u>10-1</u> |
|-----|---|-------------------------------|-------------|

Ordinance No. 5890 approving the rezone application of St. Andrews Housing Group (Andrews Rezone) to rezone a 3.501 acre tract of land at 4228 Factoria Boulevard SE, from R-5 to R-30, subject to conditions.

(This item was discussed with Council July 6, 2009.

This is a Process III application, in which the Hearing Examiner provides a written recommendation to

Council, which is the decision-making body. Should Council deny the application, your decision would be appealable to Superior Court.

The Hearing Examiner recommends Council approval with conditions.)

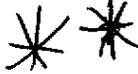
11. Other Ordinances, Resolutions and Motions

- (a) Ordinance No. 5891 authorizing: 1) amendment of the 2009-2015 Capital Investment Program Plan to create a new CIP project entitled East Link Analysis and Development Project (CIP Plan No. PW-R-159) with a project budget of \$770,000; 2) transfer of budget totaling \$710,000 from four existing CIP projects to fund PW-R-159, East Link Analysis and Development Project; and 3) amendment of the 2009-2010 General CIP Fund to increase the appropriation by \$60,000 representing funds contributed by the Transportation operating budget.
- TRAN
Goran
Sparman
- 11-1

(Discussed with Council on July 13, 2009.)

- (b) Ordinance No. 5892 amending Sections 20.10.440 and 20.25D.070 of the Land Use Code relating to Shopping Cart Containment Areas required for wholesale and retail uses; providing for severability; and establishing an effective date.
- DEV
SRVCS
- 11-17

(Discussed with Council on June 1, 2009.)

-  (c) Resolution No. 7954 authorizing execution of an Interlocal Agreement with King County regarding implementation of a Regional Transferable Development Rights program.
- PCD
Dan Stroh
- 11-29

(Discussed with Council July 6, 2009.)

12. Unfinished Business
13. Continued Oral Communications
14. New Business

15. Executive Session
16. Adjournment

* Quasi-judicial matters are those in which the Councilmembers sit as “judges” to decide issues involving specifically identified property or other rights between individuals or parties. This differs from Council’s usual role of acting in a legislative or policy-making capacity

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT:

Resolution No. 7954, authorizing execution of an Interlocal Agreement with King County regarding Regional Transfer of Development Rights.

FISCAL IMPACT:

Under the terms of this Interlocal, the County will provide \$750,000 to the City for the acquisition and creation of public open space, parks or stream amenities in the Bel-Red Subarea. This payment will be made up-front, at the time the City has a signed purchase and sale agreement for an eligible property acquisition and is ready to close on the property.

This County payment will offset a portion of the funding that otherwise would be forthcoming to the City through developer payments into the Bel-Red amenity incentive system, up to the value of 75 TDRs. The estimated difference between the County funding and potential developer incentive funding (without regional TDRs) is estimated at a maximum loss of \$750,000. However, given that developer incentive funding would be forthcoming over a number of years, the difference between receiving the County payment now and a stream of developer payments over time is estimated at a lesser loss, in the range of \$316,000 to \$545,000 (2009 \$).

STAFF CONTACT:

Dan Stroh, Planning Director, 452-5255
Planning & Community Development Department

POLICY CONSIDERATION:

In prior actions the Council has approved the inclusion of Regional TDRs in the Bel-Red amenity incentive system. The Council has also incorporated the financial assumptions of the TDR Program into the Mobility and Infrastructure Financing Plan.

At the July 6 Study Session, the Council reviewed the draft Interlocal Agreement with King County that would put the Regional TDR program into effect. The Council provided direction on the draft document, including eligible sending areas for Bel-Red development credits. Tonight this document returns for Council action.

BACKGROUND:

The Bel-Red Land Use Code amendments, adopted May 18, 2009, establish Regional TDRs as an eligible Tier 1 bonus in the Bel-Red Amenity Incentive System, subject to the following provisions of LUC 20.25D.090.C.7:

1. *TDR credits are defined in accordance with the King County TDR Program as approved or subsequently amended by the City pursuant to the Bellevue-King County TDR Interlocal Agreement.*
2. *TDR credits for use in the entire Bel-Red Subarea is limited to 75.*

The draft Agreement attached to this Agenda Memo and proposed for Council action tonight is the Bellevue-King County TDR Interlocal Agreement referenced in the above Land Use Code provision.

Refinements to Draft Agreement following the Council's July 6 Study Session

Several refinements to the July 6 Study Session draft are highlighted in the strike-draft version of the document (Attachment 1). One amendment resulted from Deputy Mayor Balducci's question regarding Section II.D, Example #1. This involves a private transaction that occurs without an appraisal, with the question as to whether this could result in a Bel-Red developer paying too much for a TDR. Per County staff, this has not been an issue with previous TDR transactions. Their concern is that for a small transaction involving lower value TDRs, an appraisal could be such a high cost relative to the overall transaction that it could make the entire deal infeasible.

However, upon further thinking, County and City staff are proposing a change to require an appraisal in these cases when the value per TDR exceeds a threshold of \$40,000. This number seems to be a reasonable balance between ensuring an objective check on TDR valuation and avoiding appraisal costs that significantly deter the desired private transactions. The amended language is as follows:

Example #1: A certified Sending Site Area landowner sells a TDR credit to a Bel-Red Subarea developer for \$40,000 without aid of an appraisal. The TDR credit shall equal 2,857 square feet of Bonus Building Area in the Bel-Red Subarea (i.e. \$40,000 divided by \$14/sf). As a threshold to ensure TDR credits are not sold for amounts significantly in excess of what they are worth, any TDR credit that sells for more than \$40,000 by a Sending Site Area landowner shall be valued using a certified Member of Appraisal Institute (MAI) appraiser and based on the conservation easement value at the time the easement was placed on the sending site property; the appraised TDR credit value shall be used for the calculation.

Additional refinements to this section clarify other aspects of the County's TDR valuation process.

A second set of amendments (Section IV) resulted from the County staff's further legal review of the draft agreement, and the need to be consistent with statutory restrictions on use of County Conservation Futures Tax levy funding. The current interpretation is that the funds must be used for acquisition; therefore in IV.C stream restoration is deleted as an eligible use of the amenity funding. Refinements to IV.D clarify the timing on County transfer of funds.

Additional amendments capture the City Council's direction on priority areas for purchase of development rights; i.e. the eligible sending areas for Bel-Red TDRs. The Council gave direction to include all the sending areas identified by staff as responsive to the Council's interests. These include the Mountains to Sound Greenway Focus Area (agricultural lands and viewshed/natural areas) and parts of the White River watershed. These have been

incorporated into the draft Agreement, in Section II.B Eligible TDR Sending Site Areas; and in Exhibit A, Maps of the Eligible Areas.

Next Steps

County staff is taking the draft Interlocal Agreement forward for County Council approval in parallel with the Bellevue Council process. Both Councils' adoption of the Interlocal Agreement, coupled with a signed purchase and sale agreement for an eligible amenity site within Bel-Red, will enable the City to receive the up-front amenity funding from the County at the time of property closing.

OPTIONS:

1. Adopt Resolution No. 7954 authorizing execution of an Interlocal Agreement with King County regarding Regional Transfer of Development Rights in the Bel-Red Subarea.
2. Do not adopt Resolution No. 7954 and provide alternative direction to staff.

RECOMMENDATION:

Adopt Resolution No. 7954 authorizing execution of an Interlocal Agreement with King County regarding Regional Transfer of Development Rights in the Bel-Red Subarea.

MOTION:

Adopt Resolution No. 7954 authorizing execution of an Interlocal Agreement with King County regarding Regional Transfer of Development Rights in the Bel-Red Subarea.

EFFECTIVE DATE:

If approved, this Resolution becomes effective immediately.

ATTACHMENTS:

1. Strike-draft version of draft Interlocal Agreement
2. Clean version of draft Interlocal Agreement
3. Proposed Resolution No. 7954

76/1517/20098

DRAFT**6-22-09 City Council Review Draft**

**AN INTERLOCAL AGREEMENT FOR THE IMPLEMENTATION OF A
REGIONAL PROGRAM TO TRANSFER DEVELOPMENT RIGHTS FROM
RURAL UNINCORPORATED KING COUNTY TO THE BEL-RED SUBAREA
IN THE CITY OF BELLEVUE**

This Agreement is hereby entered into by King County, a home rule charter county of the State of Washington, herein after referred as the "County," and The City of Bellevue, a municipal corporation of the State of Washington, herein referred to as the "City."

RECITALS

WHEREAS, the Washington State Growth Management Act (GMA), RCW 36.70A, directs development 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 forestry, agricultural, wildlife habitat and scenic resources 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 Program which authorizes incorporated areas to receive development rights transferred from rural and resource unincorporated areas; and

WHEREAS, by Bellevue Ordinance 5858 the City adopted the Bel-Red Subarea Plan to actively consider the Bel-Red Subarea as a potential receiving site for regional Transfer of Development Rights, as a means to achieve conservation of rural resource lands outside the Countywide Urban Growth Boundary; and

WHEREAS, the Bel-Red Subarea Plan calls for density incentives for residential and commercial development, and to increase public amenities to improve the pedestrian, park, and transit oriented development pattern in the Bel-Red Corridor; and

WHEREAS, by Bellevue Ordinance 5874 the City amended its Land Use Code by adopting a new Part 20.25D which established regulations, standards, and design guidelines to implement the Bel-Red Subarea Plan and permitted the use of Regional Transfer of Development Rights from rural King County to increase the development capacity of properties in the Bel-Red Corridor under certain conditions; and

WHEREAS, the County in its 2007 Budget, Ordinance 15652, appropriated funding to provide cities with amenity payments which enter into an 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 Bel-Red Subarea Plan, 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 Regional Transfer of Development Rights (TDR) Agreement in which the City agrees to take additional development to preserve rural and resource land and the County invests in receiving area amenities; and

WHEREAS, the Washington State Legislature recently affirmed the value of Regional TDR programs by adopting SSHB 1172; 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, a commitment of a minimum number of cities in the Region agreeing to take additional development to preserve rural and resource lands, and the interests of the parties; and

WHEREAS, this Agreement will act to encourage other cities in the 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 (hereafter the "Program") to transfer development rights (hereafter referred to as "rural TDR credits") from unincorporated rural and resource sending areas of the County, as depicted in Exhibit A, into the Bel-Red Subarea in the City, as depicted in Exhibit B, according to the provisions described below. Furthermore, the Program seeks to establish a marketplace for rural TDR credits that will generate on-going preservation of rural and resource lands deemed important to the City of Bellevue through the creation of a revolving fund using the King County TDR Bank.

II. RESPONSIBILITIES AND POWERS OF THE CITY OF BELLEVUE

A. City Ordinances

The City has adopted Ordinance 5874 to implement the Program, which Ordinance has, among other provisions:

1. Amended the Bellevue Land Use Code to include Part 20.25D, which establishes regulations, standards, and design guidelines for development within the Bel-Red Subarea;
2. Allowed for the Bel-Red Subarea and Land Use Districts, identified and described in Exhibit B, to act as receiving areas for rural TDR credits that originate from sending sites located in King County's unincorporated rural and resource areas under the terms of this Program;
3. Established the Bel-Red Floor Area Ratio (FAR) Amenity Incentive System, attached as Exhibit C, which allows Bel-Red development projects to exceed base FAR and base building height through the use of rural TDR credits;
4. Limited the amount of rural TDR credits that could be used within the Bel-Red Subarea to a total of 75 credits;
5. Set the level of additional development capacity ("Bonus Building Area") that may be permitted on receiving sites in the Bel-Red Subarea for each rural TDR credit at 1,333 square feet per TDR credit or at a rate otherwise established through this Agreement;

6. Established this Agreement as a source for determining the Bonus Building Area, maximum amount of TDR credits to be used, and other details of the City's participation in the Program;
7. Established and modified development standards and provisions for public amenities.

The City shall take any necessary steps to allow the City to receive and track the amenity payments described in this Agreement.

B. TDR Sending Site Areas

The City has identified the following "Sending Site Areas," described below and depicted in Exhibit A, from which rural TDR credits may be used for Bonus Building Area in the Bel-Red Subarea. Properties within these Sending Site Areas must first be "qualified" and then "certified" in accordance with the County's TDR Program (K.C.C. 21A.37).

1. The Greenway Focus Area which is composed of the following three Sending Site Areas: the Lower Snoqualmie Farm and Forest Area, the I-90 / SR 18 Area, and the Mount Si to Rattlesnake Mountain Connector Area;~~[to be identified after Council input]~~
2. ~~[to be identified after Council input]~~The White River Focus Area which is composed of the following three Sending Site Areas: the Mud Mountain – Grass Mountain Area, the Highway 410 Area, and the Greenwater Area.

C. Rural TDR Credit Limit

As an alternative to the limit of 75 rural TDR credits established in the Bel-Red Land Use Code 20.25D.090, the total Bonus Building Area in the Bel-Red Subarea and Land Use Districts allowed with the use of rural TDR credits under this Agreement shall be limited to either 75 rural TDR credits or 100,000 square feet of Bonus Building Area earned through the use of rural TDR credits, whichever is arrived at first.

D. TDR Credit Bonus Building Area

The base level of Bonus Building Area that may be permitted on receiving sites in the Bel-Red Subarea for each rural TDR credit is 1,333 square feet as established in Bel-Red Land Use Code 20.25D.090. For TDR credits purchased either from the King County TDR Bank or a private seller in a Sending Site Area for a purchase price in excess of \$20,000 per credit, sales exceed per credit.~~In order~~

to create a viable rural TDR credit market and preserve land in the Sending Site Areas, the City shall require allow an alternative method of calculating the amount of Bonus Building Area allowed for each TDR credit as follows and according to the examples shown below:

TDR credits that originate from properties in the Sending Site Areas, or TDR credits from the King County TDR Bank, shall earn Bonus Building Area equal to the appraised TDR credit value divided by \$14/sf. In the event the TDR credit was purchased directly from the Sending Site Area landowner, or purchased from the King County TDR Bank at a price in excess of ~~not equal to~~ its appraised value, the purchase price of the TDR credit may be used for this calculation in lieu of an appraisal of the TDR credit.

Example #1: A certified Sending Site Area landowner sells a TDR credit to a Bel-Red Subarea developer for \$40,000 without aid of an appraisal. The TDR credit shall equal 2,857 square feet of Bonus Building Area in the Bel-Red Subarea (i.e. \$40,000 divided by \$14/sf). Any TDR credit that sells for more than \$40,000 by a Sending Site Area landowner shall be supported by an appraisal conducted by a state certified active Member of the Appraisal Institute (MAI). The appraisal report shall establish the fair market value of the TDR credit as it applies to the sending site with a date of value that is within one year of the TDR credit sale; said appraisal shall include a before/after valuation of the sending site and encompass all TDR credits that were certified on the site (i.e. if the sending site landowner was allocated more than one certified credit, the appraisal report must include all of the credits in the valuation, not just the credit or credits being sold); the appraised TDR credit value shall be used for the calculation to determine Bonus Building Area.

Example #2: A Bel-Red Subarea developer buys and certifies a property in the Sending Site Area. The TDR credit(s) shall be valued by a state certified active Member of the Appraisal Institute (MAI). The appraisal report shall establish the fair market value of the TDR credit as it applies to the sending site with a date of value that is within one year of the TDR credit sale; said appraisal shall include a before/after valuation of the sending site and encompass all TDR credits that were certified on the site (i.e. if the sending site landowner was allocated more than one certified credit, the appraisal report must include all of the credits in the valuation, not just the credit or credits being sold). If the certified appraisal indicates each TDR credit is valued ~~at~~ to be \$30,000, the TDR credit shall equal 2,143 square feet of Bonus Building Area in the Bel-Red Subarea (i.e. \$30,000 divided by \$14/sf).

Example #3: The King County TDR Bank buys a TDR credit from a Sending Site Area landowner for \$60,000 based on an appraisal by a state certified active Member of the Appraisal Institute based on a certified MAI appraisal (K.C.C. 21A.37 requires the Bank to pay fair market appraised value for TDR credits). The Bank sells a TDR credit to a Bel-Red Subarea developer for \$60,000. The TDR credit shall equal 4,286 square feet of Bonus Building Area in the Bel-Red Subarea (i.e. \$60,000 divided by \$14/sf). The TDR Bank shall sell TDR credits in accordance with K.C.C. 21A.37; the City shall not accept TDR credits into the Bel-Red Subarea from the TDR Bank if the price per credit exceeds 120% of the original TDR Bank purchase price.

Nothing herein shall be construed to require the County to deviate from the valuation method required in KCC 21A.37.130A for sales of credits from the King County TDR Bank.

E. King County TDR Bank

The City agrees that the King County TDR Bank (hereafter the “Bank”) will be used as a revolving fund to sell rural TDR credits for Bel-Red development, and the County shall subsequently use proceeds from such TDR credit sales to buy development rights from the Sending Site Areas. The City understands the Bank will play an important role to facilitate the City-County TDR market by: (1) buying development rights up-front from willing private landowners, (2) holding the rural TDR credits, and (3) selling the rural TDR credits when a willing buyer of Bonus Building Area in the Bel-Red Subarea is available.

The City agrees that the first 37 of the 75 total rural TDR credits, or the first 50,000 square feet of the total 100,000 square feet Bonus Building Area, used in the Program (whichever occurs first) shall be with TDR credits held by the Bank. These Bank TDR credits shall have originated from forestlands and important viewshed lands such as the recently certified properties located in the Raging River Headwaters in the Mountains to Sound Greenway. Revenues the Bank receives from the sale of these TDR credits, and any other TDR credits purchased for use in the Program for Bel-Red development, shall be used to create a revolving fund for land protection in accordance with Section III B.

F. County Acknowledgment; Modifications

The County acknowledges that the provisions of Ordinances 5858 and 5874 are consistent with the intent and purposes of the Program.

G. Notification Process

The City, in consultation with the County, shall develop a process to notify the County when it has approved the use of rural TDR credits in a specific project in the Bel-Red Subarea. For purposes of this Agreement, "approved" occurs at the earlier of (a) issuance by the City's Development Services Department of the first building permit for a project using rural TDR credits; or (b) a developer's irrevocable commitment to use the rural TDR credits for a specific project.

H. Report

The City shall report to the County within thirty (30) days after the end of each calendar quarter the number of rural TDR credits that have been approved by the City for projects in the Bel-Red Subarea, and shall identify the specific projects involved. In addition, the City shall cooperate -the County in providing the information required for the annual report as described in Section VI.

III. RESPONSIBILITIES AND POWERS OF KING COUNTY

A. Program Administration

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

- 1) In accordance with K.C.C. 21A.37, facilitate and promote the TDR qualification and certification of properties located in Sending Site Areas;
- 2) Establish procedures to facilitate the sale of rural TDR credits from private landowners and the Bank;
- 3) Establish procedures to require, maintain and enforce deed restrictions on unincorporated rural and resource sending sites from which rural TDR credits are bought, in order to prohibit those sites from being developed in violation of the deed restrictions.

B. Operation of the TDR Bank

The County agrees to use revenues the Bank receives from the sale of TDR credits for Bel-Red development to create a revolving fund to acquire development rights in the future from the Sending Site Areas.

The County shall make its best efforts to identify and appraise properties

in the Sending Site Areas for potential rural TDR credit purchase by the Bank and provide the City with representative price ranges of the value of such rural TDR credits that the County has appraised and/or purchased.

C. Program Evaluation

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

D. Public Amenity Payments

The County shall provide funds as amenity payments to the City for the creation and acquisition of public open space, parks and stream amenities in the Bel-Red Subarea 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 rural TDR credits it has qualified and certified in the Sending Site Areas identified in Subsection II B.

IV. PUBLIC AMENITIES INVESTMENT

A. Initial Investment

Consistent with adopted County appropriations and statutory restrictions, the County shall provide funds as an initial investment in the amount of \$750,000 to the City for the creation and acquisition of public open space, parks or stream amenities in the Bel-Red Subarea to mitigate a portion of the impacts associated with transferred density and to encourage increased density in the Bel-Red Subarea. The \$750,000 will be disbursed according to Subsection IV ~~DE~~. The initial \$750,000 payment shall be referred to as the "Initial Amenity Funds."

B. County Fund Sources; Contracting

The source of the Initial Amenity Funds is authorized in King County's the 2007 Budget, Ordinance 15652. The Initial Amenity Funds shall only be spent on the creation and/or acquisition of public amenities in the Bel-Red Subarea

consistent with Subsection IV C. Unless otherwise required by statutory restrictions on such funds and where applicable, City contracting procedures will be used for amenity projects utilizing the Initial Amenity Funds.

C. Eligible Amenities.

The City shall only spend Initial Amenity Funds for the creation and/or acquisition of amenities in the Bel-Red Subarea indicated in this Subsection IV C, and provided that City expenditures shall be consistent with statutory restrictions in K.C.C. 26.12 of the County Conservation Futures Tax (CFT) Levy funding. The funds may only be used for the creation, improvement and/or acquisition of amenities with the following Open Space Resource Criteria as specified by one or more of the following Criteria described below:

1. Parks, open space, gardens, or gateways;
- ~~2. Stream restoration;~~
- ~~3.2. Wildlife habitat;~~
- ~~4.3. Salmon habitat and aquatic resources;~~
- ~~5.4. Scenic resources;~~
- ~~6.5. Historic or Cultural Resources;~~
- ~~7.6. Urban passive-use natural area/greenbelt~~
- ~~8.7. Park, open space or natural corridor addition~~
- ~~9.8. Passive Recreation opportunity in area with unmet needs~~

D. Funding of Amenities

1. Initial Amenity Funds \$750,000. After adoption of this Agreement, (The County shall provide \$750,000 to the City for the acquisition of open space property in the Bel-Red Subarea. Thirty days prior to the County's disbursement of funds, the City shall provide the County with: a project description, time schedule, and budget for the City's open space acquisition. The County shall disburse funds for the acquisition contingent upon a signed purchase and sale agreement provided by the City; 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 within thirty (30) days following the later of: adoption of this Agreement; or the City providing the County with either a signed purchase and sale agreement for a by the City particular open space property in the Bel-Red Subarea or a final approved CIP for stream restoration work within the Bel-Red Subarea.

4.—

The County shall not withhold or delay approval of a purchase or the concept plan and scope of work so long as such purchase or work meets the restrictions of Section IV.C 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. Priority for other Funding. In addition to the provisions for public amenities under this Subsection IV, the County shall, while this Program is in effect, consider granting priority to amenity projects within the Bel-Red Subarea to receive funding from other sources to increase amenities in the area.
3. Future Amenity Funding. Prior to the transfer of all 75 rural TDR credits for use in the Bel-Red Subarea, or all 100,000 square feet of bonus building area has been approved for use in the Bel-Red Subarea with rural TDR credits, the County and the City may consider future amenity fund payments to extend the Program according to Section V.C, beyond the limits set forth in Section II C.

E. Funding is Additional

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

V. DURATION

A. Duration

This Regional TDR Agreement shall become effective on the date it is signed by all parties and shall continue until all 75 rural TDR credits have been used for development in the Bel-Red Subarea, or 100,000 square feet of bonus building area has been used for development in the Bel-Red Subarea with the use of rural TDR credits, unless earlier terminated as provided in Section V B.

B. Termination

Either party may terminate this Agreement upon 180 days' written notice to the other if: (1) the City's development regulations allowing the use of rural TDR credits, or the provisions of the County's development regulations 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 shall materially default in the performance of its obligations herein, and shall not cure such default within thirty (30) days' notice after such party's receipt of written notice thereof from the City or County, as the case may be. Any

termination of this Agreement shall affect the use of rural TDR credits previously certified by the County for use in the Bel-Red Subarea 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 Initial Amenity Funds previously provided by the County under the terms hereof, nor the City's right to receive County funds for which the City shall have satisfied all conditions to disbursement prior to termination. In the event this Agreement is terminated by the County pursuant to Section V(B)(2) because the City has modified its Land Use Code in a manner that prohibits or effectively prohibits the use of rural TDRs consistent with the Program, and the Initial Amenity Funds provided in Section VI(D)(1) have been disbursed to the City, the City shall refund to the County a percentage of the Initial Amenity Funds equal to the percentage of the 100,000 square feet of Bonus Building Area that has not been transferred into the Bel-Red Subarea pursuant to the Program.

C. Extension

Pursuant to a mutual written agreement between the parties, this Agreement may be extended beyond the date at which all 75 rural TDR credits have been transferred for development in the Bel-Red Subarea, or beyond the date at which all 100,000 square feet of bonus building area has been used for development in the Bel-Red Subarea with the use of rural TDR credits.

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, and a commitment of at least 5 cities in the Region agreeing to take additional development capacity to preserve rural and resource lands in concert with Regional TDR legislation passed by the 2009 WA State Legislature and codified in RCW Chapter 43.362.

To extend this Agreement, the City or the County shall make a written request to the other not less than sixty (60) days prior to the end of this Agreement. The request shall specify the proposed terms of the extension. The parties must agree to the extension in writing by the termination date or the agreement will lapse. 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.

1. Extension - Future Amenity Funding. Subject to available budget authority, the County through the King County Executive, and the City will negotiate in good faith to determine the amount of future amenity funds to be provided by the County to the City-, provided that notwithstanding any other provision of this Agreement nothing herein shall obligate the County to any funding beyond the initial \$750,000, including ongoing programs or projects partially funded. The

level of additional County amenity funding above the initial \$750,000 authorized, shall be determined by the County in cooperation with the City based on the number and cost of rural TDR credits accepted for use in permitted projects inside the Bel-Red Subarea during the initial term of this Agreement.

Future amenity funding from the County above the initial \$750,000 authorized in this Agreement shall be contingent on appropriations adopted by the Metropolitan King County Council.

2. Use of Future Amenity Funding. Additional funds provided by the County under Section V shall be expended by the City only for amenities mutually approved by the City and County. The County shall not unreasonably withhold approval of amenities consistent with County statutory restrictions and the City's Bel-Red Subarea Plan.

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 rural TDR credits bought and sold by the TDR Bank;
- 3) the number and price of rural 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 rural TDR credits;
- 5) the effect of deed restrictions in preserving the rural character and conservation values of sending sites;
- 6) the square foot bonus building area, outside of this Program, earned by developers using the City's Bel-Red FAR Amenity Incentive System;
- 7) the value and types of amenities in the Bel-Red Subarea, outside of this Program, funded by developers using the City's Bel-Red FAR Amenity Incentive System;
- 8) the number of development projects in the Bel-Red Subarea using the Program, the number of rural TDR credits approved, the square foot bonus building area approved for development using the Program, and the ease or difficulty in permitting projects using the Program; and
- 9) the remaining balance of the Initial Amenity Fund and the City's use of the funds (i.e. types of amenity improvements).

The County shall provide information pertaining to numbers 1 through 5; 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 the same at its sole cost and expense, provided that the City retains the right to participate in said suit if any principle of governmental or public law is involved, and if final judgment be rendered against the City and its officers, agents, and employees, or any of them, or jointly against the City and County and their respective officers, agents, and employees, or any of them, the County shall satisfy the same.

B. City Negligence

The City shall indemnify and hold harmless the County and its officers, agents and employees or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the City, its officers, agents, and employees, or any of them, in performing obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the County, the City shall defend the same at its sole cost and expense, provided that the County retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the County and its officers, agents, employees, or any of them, or jointly against the City and County and their respective officers, agents, and employees or any of them, the City shall satisfy the same.

C. Concurrent Negligence

The City and the County acknowledge and agree that if such claims, actions, suits, liability, loss, costs, expenses and damages are caused by or result from the concurrent negligence of the City, its agents, employees, and/or officers and the County, its agents, employees, and/or officers, this section shall be valid and enforceable only to the extent of the negligence of each party, its agents, employees and/or officers.

VIII GENERAL TERMS

A. Administration

This Agreement shall be administered for the City by the Director of the Development Services Department 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 in writing and signed by both parties.

In witness whereof, the parties have executed this Agreement as of the ___ day of _____, 2009.

KING COUNTY

Approved as to Form:

| By: _____

_____ By: _____

| By: _____
Deputy Prosecuting Attorney

Senior

Pursuant to Ordinance _____

THE CITY OF BELLEVUE

Approved as to Form:
Lori M. Riordan, City Attorney

By: _____

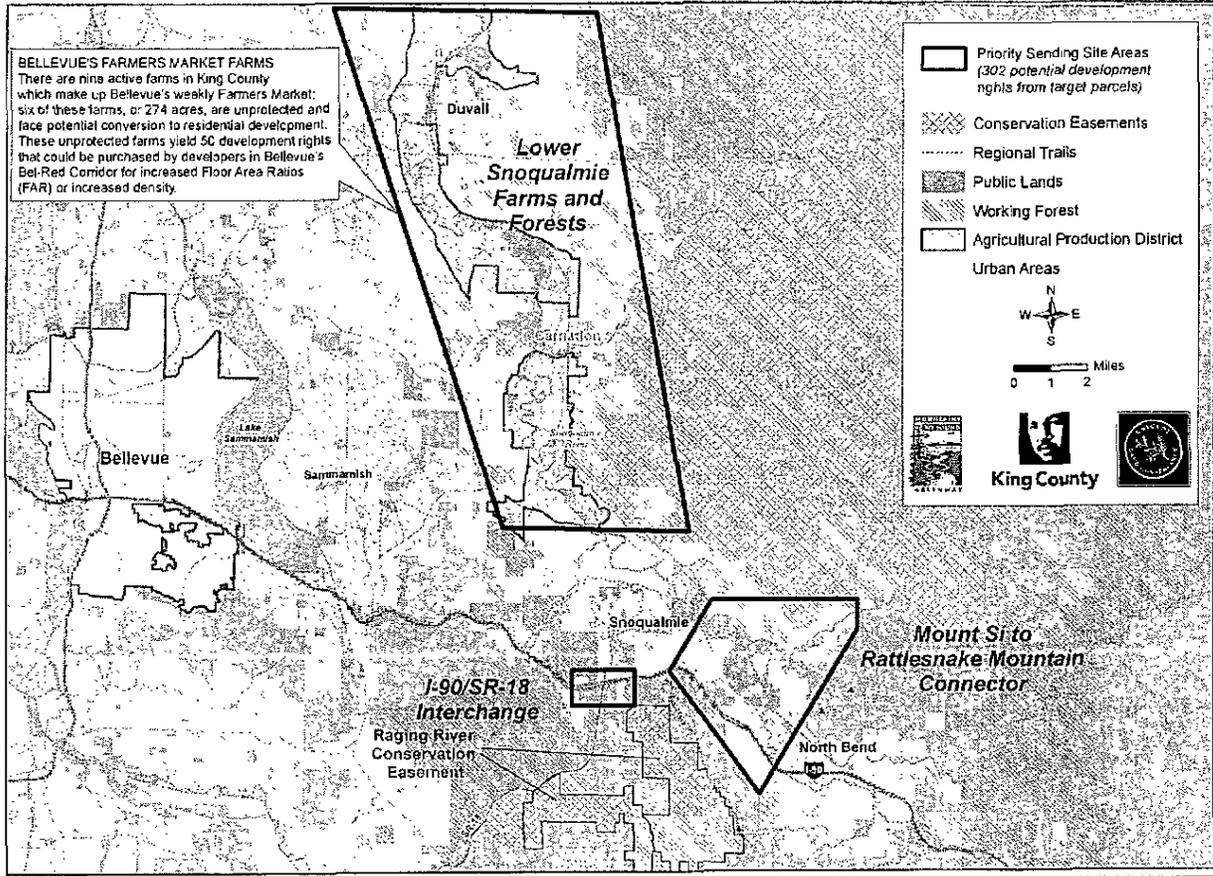
By: _____

Mary Kate Berens
Deputy City Attorney

Pursuant to Ordinance _____

EXHIBIT A:
Regional TDR Sending Site Areas

GREENWAY FOCUS AREA



White River Focus Area

Priority Sending Site Areas

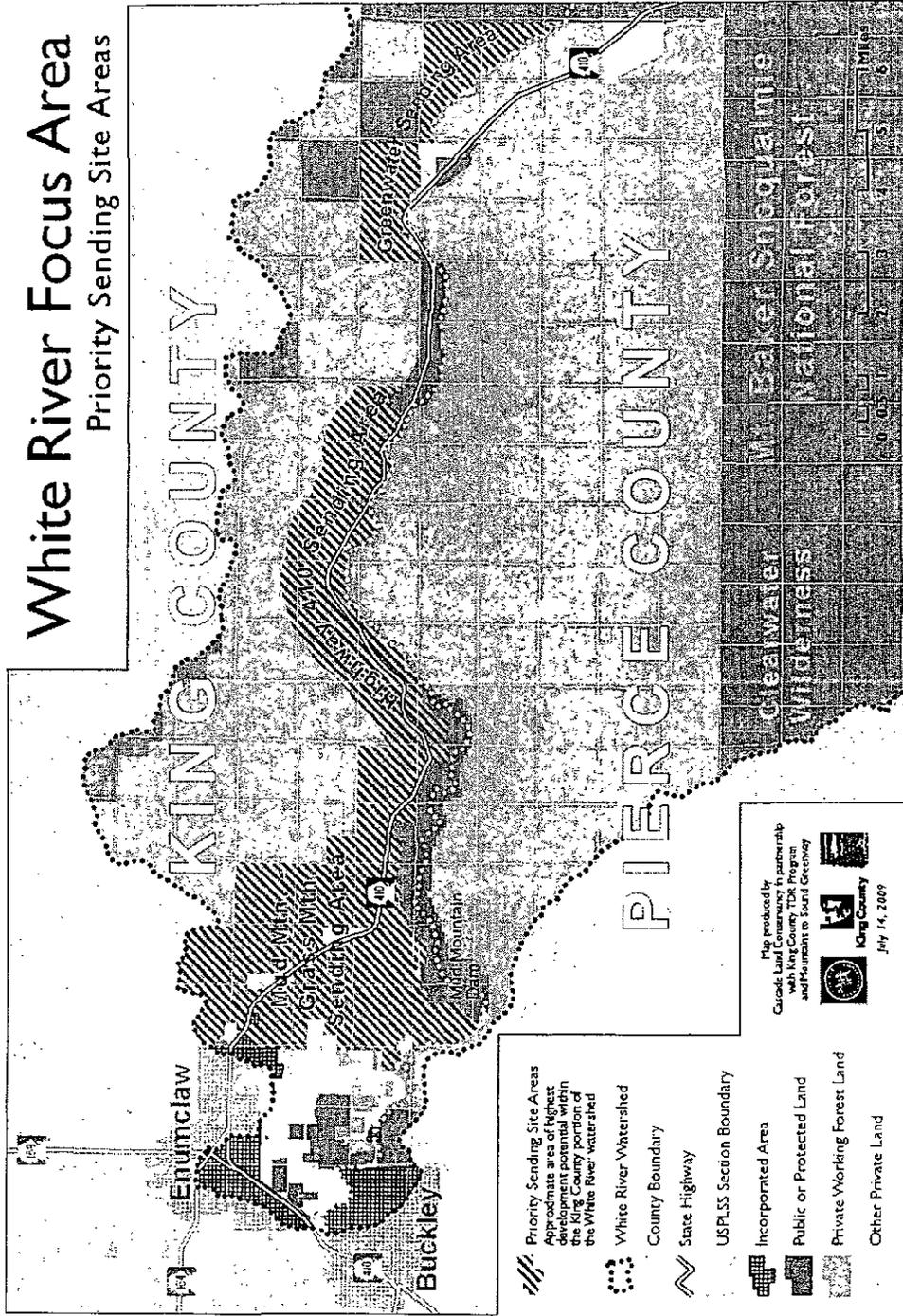


EXHIBIT B:
Bel-Red Subarea and Land Use Districts
Bel-Red Land Use Districts, Bellevue LUC 20.25D.010 B

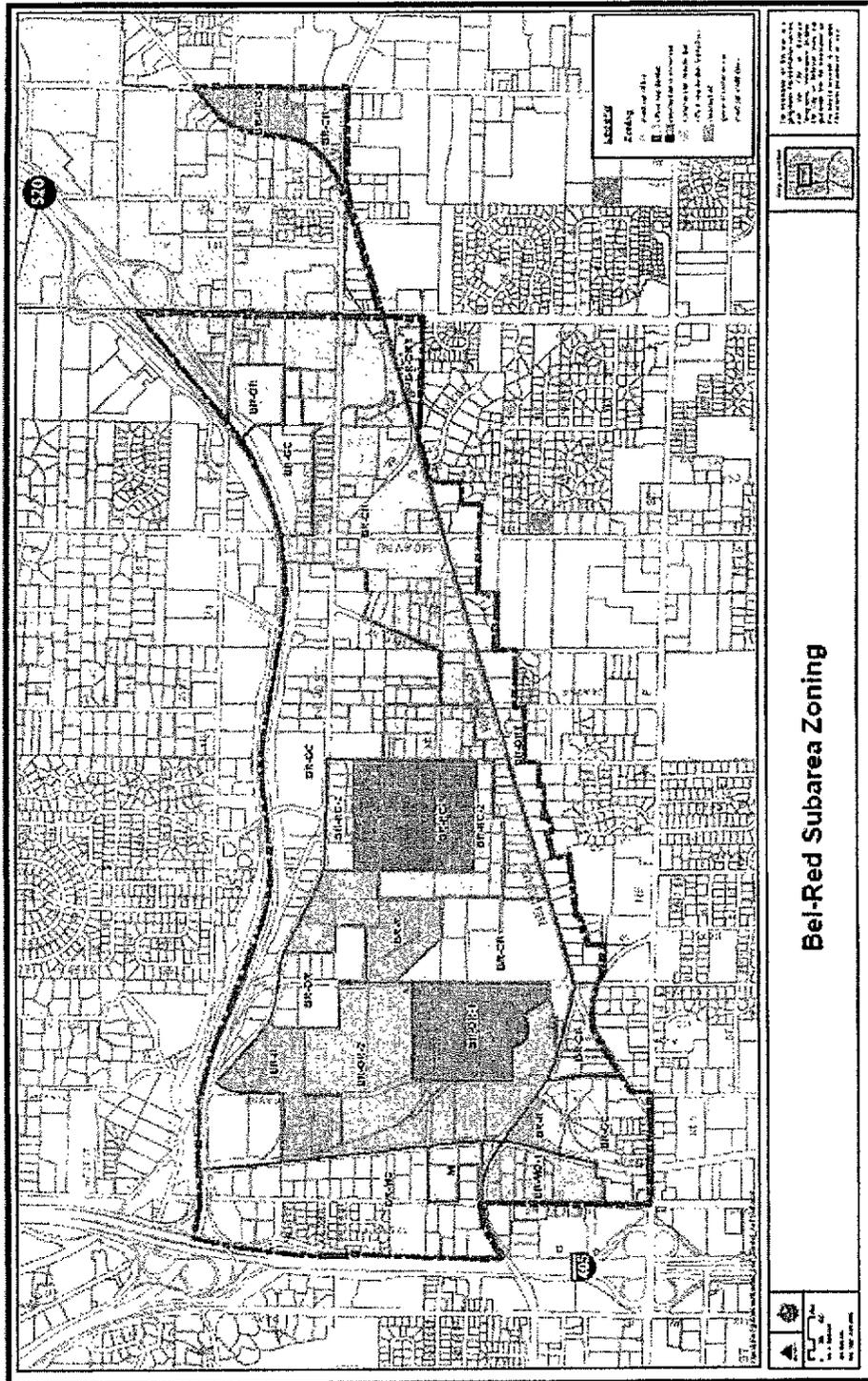
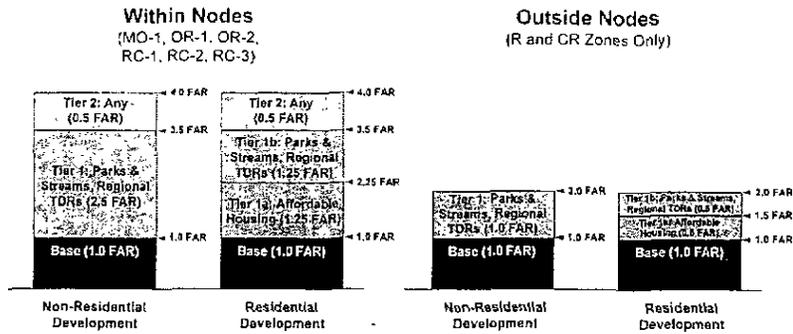


EXHIBIT C:
Excerpts from Bel-Red FAR Amenity Incentive System.
 For full text of this section, see Bellevue LUC 20.25D.090

Example of Tiered FAR Amenity Allocation
 Figure 20.25D.090.C



Note: Tier 1 bonus(es) must be fulfilled prior to pursuing Tier 2 bonus. Where applicable, Tier 1a bonus must be fulfilled prior to pursuing Tier 1b bonus.

Chart 20.25D.090.C FAR Amenity Incentive System

FAR AMENITY STANDARDS		
AMENITY (1)	APPLICABLE ZONES AND BONUS (3)	DESIGN CRITERIA
	MO-1, OR-1, OR-2, RC-1, RC-2, RC-3, CR, R	
TIER 1b		
6. REGIONAL TRANSFER OF DEVELOPMENT RIGHTS (TDRs) Transfer of development rights to designated Bel-Red areas that achieve conservation of rural resource lands outside the Countywide Urban Growth Boundary.	1,333 sf bonus building area per TDR credit, or per Bellevue-King County TDR Interlocal Agreement as originally adopted or subsequently amended.	1. TDR credits defined in accordance with the King County TDR Program as approved or subsequently amended by the city pursuant to the Bellevue-King County TDR Interlocal Agreement. 2. TDR credits for use in the entire Bel-Red Subarea is limited to 75.

EXHIBIT C:

Bel-Red FAR Amenity Incentive System

Insert Bellevue Land Use Code 20.25D.090

7/15/2009

**AN INTERLOCAL AGREEMENT FOR THE IMPLEMENTATION OF A
REGIONAL PROGRAM TO TRANSFER DEVELOPMENT RIGHTS FROM
RURAL UNINCORPORATED KING COUNTY TO THE BEL-RED SUBAREA
IN THE CITY OF BELLEVUE**

This Agreement is hereby entered into by King County, a home rule charter county of the State of Washington, herein after referred as the "County," and The City of Bellevue, a municipal corporation of the State of Washington, herein referred to as the "City."

RECITALS

WHEREAS, the Washington State Growth Management Act (GMA), RCW 36.70A, directs development 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 forestry, agricultural, wildlife habitat and scenic resources 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 Program which authorizes incorporated areas to receive development rights transferred from rural and resource unincorporated areas; and

WHEREAS, by Bellevue Ordinance 5858 the City adopted the Bel-Red Subarea Plan to actively consider the Bel-Red Subarea as a potential receiving site for regional Transfer of Development Rights, as a means to achieve conservation of rural resource lands outside the Countywide Urban Growth Boundary; and

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WHEREAS, the Bel-Red Subarea Plan calls for density incentives for residential and commercial development, and to increase public amenities to improve the pedestrian, park, and transit oriented development pattern in the Bel-Red Corridor; and

WHEREAS, by Bellevue Ordinance 5874 the City amended its Land Use Code by adopting a new Part 20.25D which established regulations, standards, and design guidelines to implement the Bel-Red Subarea Plan and permitted the use of Regional Transfer of Development Rights from rural King County to increase the development capacity of properties in the Bel-Red Corridor under certain conditions; and

WHEREAS, the County in its 2007 Budget, Ordinance 15652, appropriated funding to provide cities with amenity payments which 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 Bel-Red Subarea, 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 Regional Transfer of Development Rights (TDR) Agreement in which the City agrees to take additional development to preserve rural and resource land and the County invests in receiving area amenities; and

WHEREAS, the Washington State Legislature recently affirmed the value of Regional TDR programs by adopting SSHB 1172; 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, a commitment of a minimum number of cities in the Region agreeing to take additional development to preserve rural and resource lands, and the interests of the parties; and

WHEREAS, this Agreement will act to encourage other cities in the 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 (hereafter the "Program") to transfer development rights (hereafter referred to as "rural TDR credits") from unincorporated rural and resource sending areas of the County, as depicted in Exhibit A, into the Bel-Red Subarea in the City, as depicted in Exhibit B, according to the provisions described below. Furthermore, the Program seeks to establish a marketplace for rural TDR credits that will generate on-going preservation of rural and resource lands deemed important to the City of Bellevue through the creation of a revolving fund using the King County TDR Bank.

II. RESPONSIBILITIES AND POWERS OF THE CITY OF BELLEVUE

A. *City Ordinances*

The City has adopted Ordinance 5874 to implement the Program, which Ordinance has, among other provisions:

1. Amended the Bellevue Land Use Code to include Part 20.25D, which establishes regulations, standards, and design guidelines for development within the Bel-Red Subarea;
2. Allowed for the Bel-Red Subarea and Land Use Districts, identified and described in Exhibit B, to act as receiving areas for rural TDR credits that originate from sending sites located in King County's unincorporated rural and resource areas under the terms of this Program;
3. Established the Bel-Red Floor Area Ratio (FAR) Amenity Incentive System, attached as Exhibit C, which allows Bel-Red development projects to exceed base FAR and base building height through the use of rural TDR credits;
4. Limited the amount of rural TDR credits that could be used within the Bel-Red Subarea to a total of 75 credits;
5. Set the level of additional development capacity ("Bonus Building Area") that may be permitted on receiving sites in the Bel-Red Subarea for each rural TDR credit at 1,333 square feet per TDR credit or at a rate otherwise established through this Agreement;

6. Established this Agreement as a source for determining the Bonus Building Area, maximum amount of TDR credits to be used, and other details of the City's participation in the Program;
7. Established and modified development standards and provisions for public amenities.

The City shall take any necessary steps to allow the City to receive and track the amenity payments described in this Agreement.

B. TDR Sending Site Areas

The City has identified the following "Sending Site Areas," described below and depicted in Exhibit A, from which rural TDR credits may be used for Bonus Building Area in the Bel-Red Subarea. Properties within these Sending Site Areas must first be "qualified" and then "certified" in accordance with the County's TDR Program (K.C.C. 21A.37).

1. The Greenway Focus Area which is composed of the following three Sending Site Areas: the Lower Snoqualmie Farm and Forest Area, the I-90 / SR 18 Area, and the Mount Si to Rattlesnake Mountain Connector Area;
2. The White River Focus Area which is composed of the following three Sending Site Areas: the Mud Mountain – Grass Mountain Area, the Highway 410 Area, and the Greenwater Area.

C. Rural TDR Credit Limit

As an alternative to the limit of 75 rural TDR credits established in the Bel-Red Land Use Code 20.25D.090, the total Bonus Building Area in the Bel-Red Subarea and Land Use Districts allowed with the use of rural TDR credits under this Agreement shall be limited to either 75 rural TDR credits or 100,000 square feet of Bonus Building Area earned through the use of rural TDR credits, whichever is arrived at first.

D. TDR Credit Bonus Building Area

The base level of Bonus Building Area that may be permitted on receiving sites in the Bel-Red Subarea for each rural TDR credit is 1,333 square feet as established in Bel-Red Land Use Code 20.25D.090. For TDR credits purchased either from the King County TDR Bank or a private seller in a Sending Site Area for a purchase price in excess of \$20,000 per credit, the City shall require an

alternative method of calculating the amount of Bonus Building Area allowed for each TDR credit as follows and according to the examples shown below:

TDR credits that originate from properties in the Sending Site Areas, or TDR credits from the King County TDR Bank, shall earn Bonus Building Area equal to the appraised TDR credit value divided by \$14/sf. In the event the TDR credit was purchased directly from the Sending Site Area landowner, or purchased from the King County TDR Bank at a price in excess of its appraised value, the purchase price of the TDR credit may be used for this calculation in lieu of an appraisal of the TDR credit.

Example #1: A certified Sending Site Area landowner sells a TDR credit to a Bel-Red Subarea developer for \$40,000 without aid of an appraisal. The TDR credit shall equal 2,857 square feet of Bonus Building Area in the Bel-Red Subarea (i.e. \$40,000 divided by \$14/sf). Any TDR credit that sells for more than \$40,000 by a Sending Site Area landowner shall be supported by an appraisal conducted by a state certified active Member of the Appraisal Institute (MAI). The appraisal report shall establish the fair market value of the TDR credit as it applies to the sending site with a date of value that is within one year of the TDR credit sale; said appraisal shall include a before/after valuation of the sending site and encompass all TDR credits that were certified on the site (i.e. if the sending site landowner was allocated more than one certified credit, the appraisal report must include all of the credits in the valuation, not just the credit or credits being sold); the appraised TDR credit value shall be used for the calculation to determine Bonus Building Area.

Example #2: A Bel-Red Subarea developer buys and certifies a property in the Sending Site Area. The TDR credit(s) shall be valued by a state certified active Member of the Appraisal Institute (MAI). The appraisal report shall establish the fair market value of the TDR credit as it applies to the sending site with a date of value that is within one year of the TDR credit sale; said appraisal shall include a before/after valuation of the sending site and encompass all TDR credits that were certified on the site (i.e. if the sending site landowner was allocated more than one certified credit, the appraisal report must include all of the credits in the valuation, not just the credit or credits being sold). If the certified appraisal indicates each TDR credit is valued at \$30,000, the TDR credit shall equal 2,143 square feet of Bonus Building Area in the Bel-Red Subarea (i.e. \$30,000 divided by \$14/sf).

Example #3: The King County TDR Bank buys a TDR credit from a Sending Site Area landowner for \$60,000 based on an appraisal by a state certified active Member of the Appraisal Institute (K.C.C. 21A.37 requires the Bank to

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pay fair market value for TDR credits). The Bank sells a TDR credit to a Bel-Red Subarea developer for \$60,000. The TDR credit shall equal 4,286 square feet of Bonus Building Area in the Bel-Red Subarea (i.e. \$60,000 divided by \$14/sf). The TDR Bank shall sell TDR credits in accordance with K.C.C. 21A.37; the City shall not accept TDR credits into the Bel-Red Subarea from the TDR Bank if the price per credit exceeds 120% of the original TDR Bank purchase price.

Nothing herein shall be construed to require the County to deviate from the valuation method required in KCC 21A.37.130A for sales of credits from the King County TDR Bank.

E. King County TDR Bank

The City agrees that the King County TDR Bank (hereafter the "Bank") will be used as a revolving fund to sell rural TDR credits for Bel-Red development, and the County shall subsequently use proceeds from such TDR credit sales to buy development rights from the Sending Site Areas. The City understands the Bank will play an important role to facilitate the City-County TDR market by: (1) buying development rights up-front from willing private landowners, (2) holding the rural TDR credits, and (3) selling the rural TDR credits when a willing buyer of Bonus Building Area in the Bel-Red Subarea is available.

The City agrees that the first 37 of the 75 total rural TDR credits, or the first 50,000 square feet of the total 100,000 square feet Bonus Building Area, used in the Program (whichever occurs first) shall be with TDR credits held by the Bank. These Bank TDR credits shall have originated from forestlands and important viewshed lands such as the recently certified properties located in the Raging River Headwaters in the Mountains to Sound Greenway. Revenues the Bank receives from the sale of these TDR credits, and any other TDR credits purchased for use in the Program for Bel-Red development, shall be used to create a revolving fund for land protection in accordance with Section III B.

F. County Acknowledgment; Modifications

The County acknowledges that the provisions of Ordinances 5858 and 5874 are consistent with the intent and purposes of the Program.

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G. Notification Process

The City, in consultation with the County, shall develop a process to notify the County when it has approved the use of rural TDR credits in a specific project in the Bel-Red Subarea. For purposes of this Agreement, "approved" occurs at the earlier of (a) issuance by the City's Development Services Department of the first building permit for a project using rural TDR credits; or (b) a developer's irrevocable commitment to use the rural TDR credits for a specific project.

H. Report

The City shall report to the County within thirty (30) days after the end of each calendar quarter the number of rural TDR credits that have been approved by the City for projects in the Bel-Red Subarea, and shall identify the specific projects involved. In addition, the City shall cooperate the County in providing the information required for the annual report as described in Section VI.

III. RESPONSIBILITIES AND POWERS OF KING COUNTY

A. Program Administration

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

- 1) In accordance with K.C.C. 21A.37, facilitate and promote the TDR qualification and certification of properties located in Sending Site Areas;
- 2) Establish procedures to facilitate the sale of rural TDR credits from private landowners and the Bank;
- 3) Establish procedures to require, maintain and enforce deed restrictions on unincorporated rural and resource sending sites from which rural TDR credits are bought, in order to prohibit those sites from being developed in violation of the deed restrictions.

B. Operation of the TDR Bank

The County agrees to use revenues the Bank receives from the sale of TDR credits for Bel-Red development to create a revolving fund to acquire development rights in the future from the Sending Site Areas.

The County shall make its best efforts to identify and appraise properties

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in the Sending Site Areas for potential rural TDR credit purchase by the Bank and provide the City with representative price ranges of the value of such rural TDR credits that the County has appraised and/or purchased.

C. Program Evaluation

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

D. Public Amenity Payments

The County shall provide funds as amenity payments to the City for the creation and acquisition of public open space, parks and stream amenities in the Bel-Red Subarea 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 rural TDR credits it has qualified and certified in the Sending Site Areas identified in Subsection II B.

IV. PUBLIC AMENITIES INVESTMENT

A. Initial Investment

Consistent with adopted County appropriations and statutory restrictions, the County shall provide funds as an initial investment in the amount of \$750,000 to the City for the creation and acquisition of public open space, parks or stream amenities in the Bel-Red Subarea to mitigate a portion of the impacts associated with transferred density and to encourage increased density in the Bel-Red Subarea. The \$750,000 will be disbursed according to Subsection IV D. The initial \$750,000 payment shall be referred to as the "Initial Amenity Funds."

B. County Fund Sources; Contracting

The source of the Initial Amenity Funds is authorized in King County's 2007 Budget, Ordinance 15652. The Initial Amenity Funds shall only be spent on the creation and/or acquisition of public amenities in the Bel-Red Subarea

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consistent with Subsection IV C. Unless otherwise required by statutory restrictions on such funds and where applicable, City contracting procedures will be used for amenity projects utilizing the Initial Amenity Funds.

C. Eligible Amenities.

The City shall only spend Initial Amenity Funds for the creation and/or acquisition of amenities in the Bel-Red Subarea indicated in this Subsection IV C, and provided that City expenditures shall be consistent with statutory restrictions in K.C.C. 26.12 of the County Conservation Futures Tax (CFT) Levy funds. The funds may only be used for the creation, improvement and/or acquisition of amenities with the following Open Space Resource Criteria as specified by one or more of the following Criteria described below:

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

D. Funding of Amenities

1. Initial Amenity Funds. After adoption of this Agreement, the County shall provide \$750,000 to the City for the acquisition of open space property in the Bel-Red Subarea. Thirty days prior to the County's disbursement of funds, the City shall provide the County with: a project description, time schedule, and budget for the City's open space acquisition. The County shall disburse funds for the acquisition contingent upon a signed purchase and sale agreement provided by the City; 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 or the concept plan and scope of work so long as such purchase or work meets the restrictions of Section IV.C 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. Priority for other Funding. In addition to the provisions for public amenities under this Subsection IV, the County shall, while this Program is in effect,

7/15/2009

consider granting priority to amenity projects within the Bel-Red Subarea to receive funding from other sources to increase amenities in the area.

3. Future Amenity Funding. Prior to the transfer of all 75 rural TDR credits for use in the Bel-Red Subarea, or all 100,000 square feet of bonus building area has been approved for use in the Bel-Red Subarea with rural TDR credits, the County and the City may consider future amenity fund payments to extend the Program according to Section V C, beyond the limits set forth in Section II C.

E. Funding is Additional

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

V. DURATION

A. Duration

This Regional TDR Agreement shall become effective on the date it is signed by all parties and shall continue until all 75 rural TDR credits have been used for development in the Bel-Red Subarea, or 100,000 square feet of bonus building area has been used for development in the Bel-Red Subarea with the use of rural TDR credits, unless earlier terminated as provided in Section V B.

B. Termination

Either party may terminate this Agreement upon 180 days' written notice to the other if: (1) the City's development regulations allowing the use of rural TDR credits, or the provisions of the County's development regulations 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 shall materially default in the performance of its obligations herein, and shall not cure such default within thirty (30) days' notice after such party's receipt of written notice thereof from the City or County, as the case may be. Any termination of this Agreement shall affect the use of rural TDR credits previously certified by the County for use in the Bel-Red Subarea 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 Initial Amenity Funds previously provided by the County under the terms hereof, nor the City's right to receive County funds for which the City shall have satisfied all conditions to disbursement prior to termination. In the event this Agreement is terminated by the County pursuant to Section V(B)(2) because the

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City has modified its Land Use Code in a manner that prohibits or effectively prohibits the use of rural TDRs consistent with the Program, and the Initial Amenity Funds provided in Section VI(D)(1) have been disbursed to the City, the City shall refund to the County a percentage of the Initial Amenity Funds equal to the percentage of the 100,000 square feet of Bonus Building Area that has not been transferred into the Bel-Red Subarea pursuant to the Program.

C. Extension

Pursuant to a mutual written agreement between the parties, this Agreement may be extended beyond the date at which all 75 rural TDR credits have been transferred for development in the Bel-Red Subarea, or beyond the date at which all 100,000 square feet of bonus building area has been used for development in the Bel-Red Subarea with the use of rural TDR credits.

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, and a commitment of at least 5 cities in the Region agreeing to take additional development capacity to preserve rural and resource lands in concert with Regional TDR legislation passed by the 2009 WA State Legislature and codified in RCW Chapter 43.362.

To extend this Agreement, the City or the County shall make a written request to the other not less than sixty (60) days prior to the end of this Agreement. The request shall specify the proposed terms of the extension. The parties must agree to the extension in writing by the termination date or the agreement will lapse. 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.

1. Extension - Future Amenity Funding. Subject to available budget authority, the County through the King County Executive, and the City will negotiate in good faith to determine the amount of future amenity funds to be provided by the County to the City, provided that notwithstanding any other provision of this Agreement nothing herein shall obligate the County to any funding beyond the initial \$750,000, including ongoing programs or projects partially funded. The level of additional County amenity funding above the initial \$750,000 authorized, shall be determined by the County in cooperation with the City based on the number and cost of rural TDR credits accepted for use in permitted projects inside the Bel-Red Subarea during the initial term of this Agreement.

Future amenity funding from the County above the initial \$750,000 authorized in this Agreement shall be contingent on appropriations adopted by the

Metropolitan King County Council,

2. Use of Future Amenity Funding. Additional funds provided by the County under Section V shall be expended by the City only for amenities mutually approved by the City and County. The County shall not unreasonably withhold approval of amenities consistent with County statutory restrictions and the City's Bel-Red Subarea Plan.

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 rural TDR credits bought and sold by the TDR Bank;
- 3) the number and price of rural 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 rural TDR credits;

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- 5) the effect of deed restrictions in preserving the rural character and conservation values of sending sites;
- 6) the square foot bonus building area, outside of this Program, earned by developers using the City's Bel-Red FAR Amenity Incentive System;
- 7) the value and types of amenities in the Bel-Red Subarea, outside of this Program, funded by developers using the City's Bel-Red FAR Amenity Incentive System;
- 8) the number of development projects in the Bel-Red Subarea using the Program, the number of rural TDR credits approved, the square foot bonus building area approved for development using the Program, and the ease or difficulty in permitting projects using the Program; and
- 9) the remaining balance of the Initial Amenity Fund and the City's use of the funds (i.e. types of amenity improvements).

The County shall provide information pertaining to numbers 1 through 5; 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 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

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damage is brought against the County, the City shall defend the same at its sole cost and expense, provided that the County retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the County and its officers, agents, employees, or any of them, or jointly against the City and County and their respective officers, agents, and employees or any of them, the City shall satisfy the same.

C. Concurrent Negligence

The City and the County acknowledge and agree that if such claims, actions, suits, liability, loss, costs, expenses and damages are caused by or result from the concurrent negligence of the City, its agents, employees, and/or officers and the County, its agents, employees, and/or officers, this section shall be valid and enforceable only to the extent of the negligence of each party, its agents, employees and/or officers.

VIII GENERAL TERMS

A. Administration

This Agreement shall be administered for the City by the Director of the Development Services Department 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.

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E. Entire Agreement

This Agreement is the complete expression of the terms hereof and any oral representation or understanding not incorporated herein is excluded. Any modifications to this Agreement shall be in writing and signed by both parties.

In witness whereof, the parties have executed this Agreement as of the ___ day of _____, 2009.

KING COUNTY

Approved as to Form:

By: _____

By: _____

Senior Deputy Prosecuting Attorney

Pursuant to Ordinance _____

THE CITY OF BELLEVUE

Approved as to Form:

Lori M. Riordan, City Attorney

By: _____

By: _____

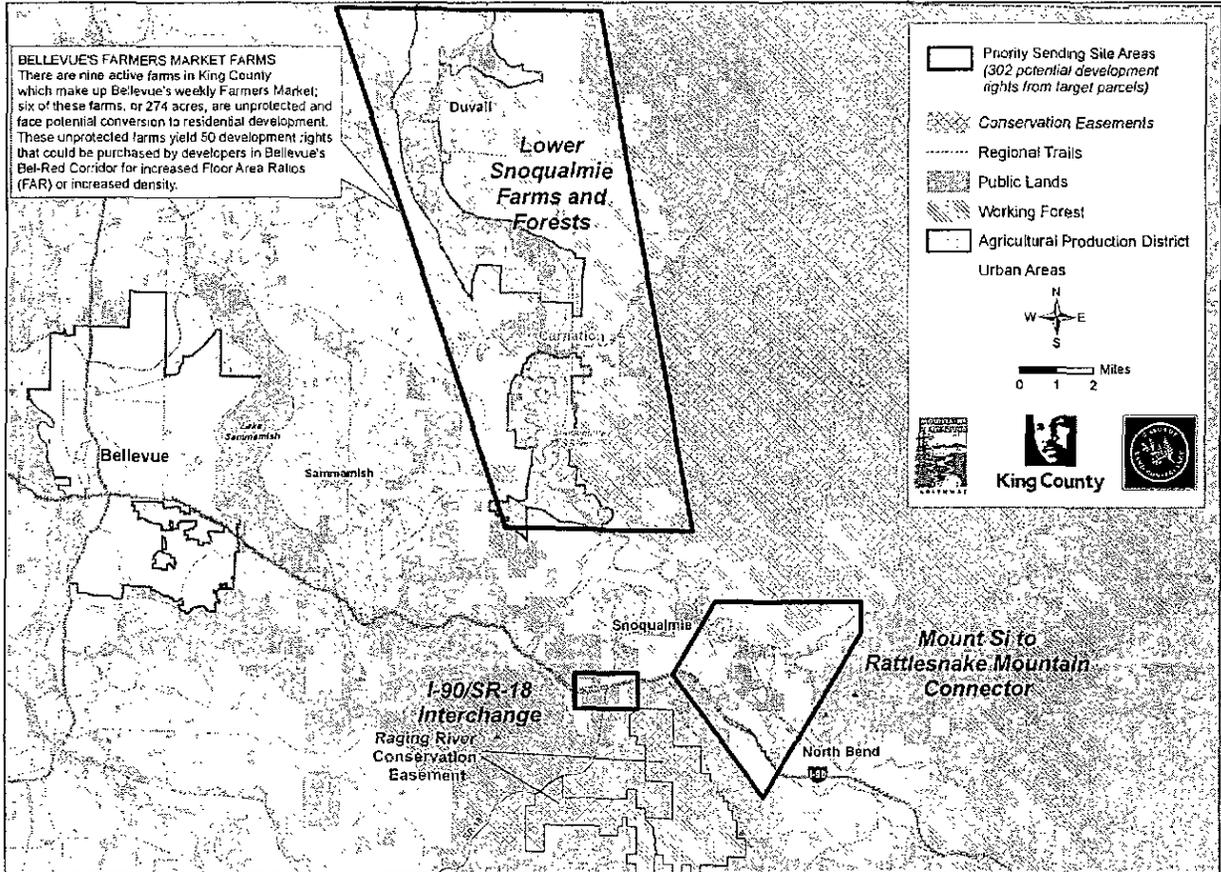
Mary Kate Berens

Deputy City Attorney

Pursuant to Ordinance _____

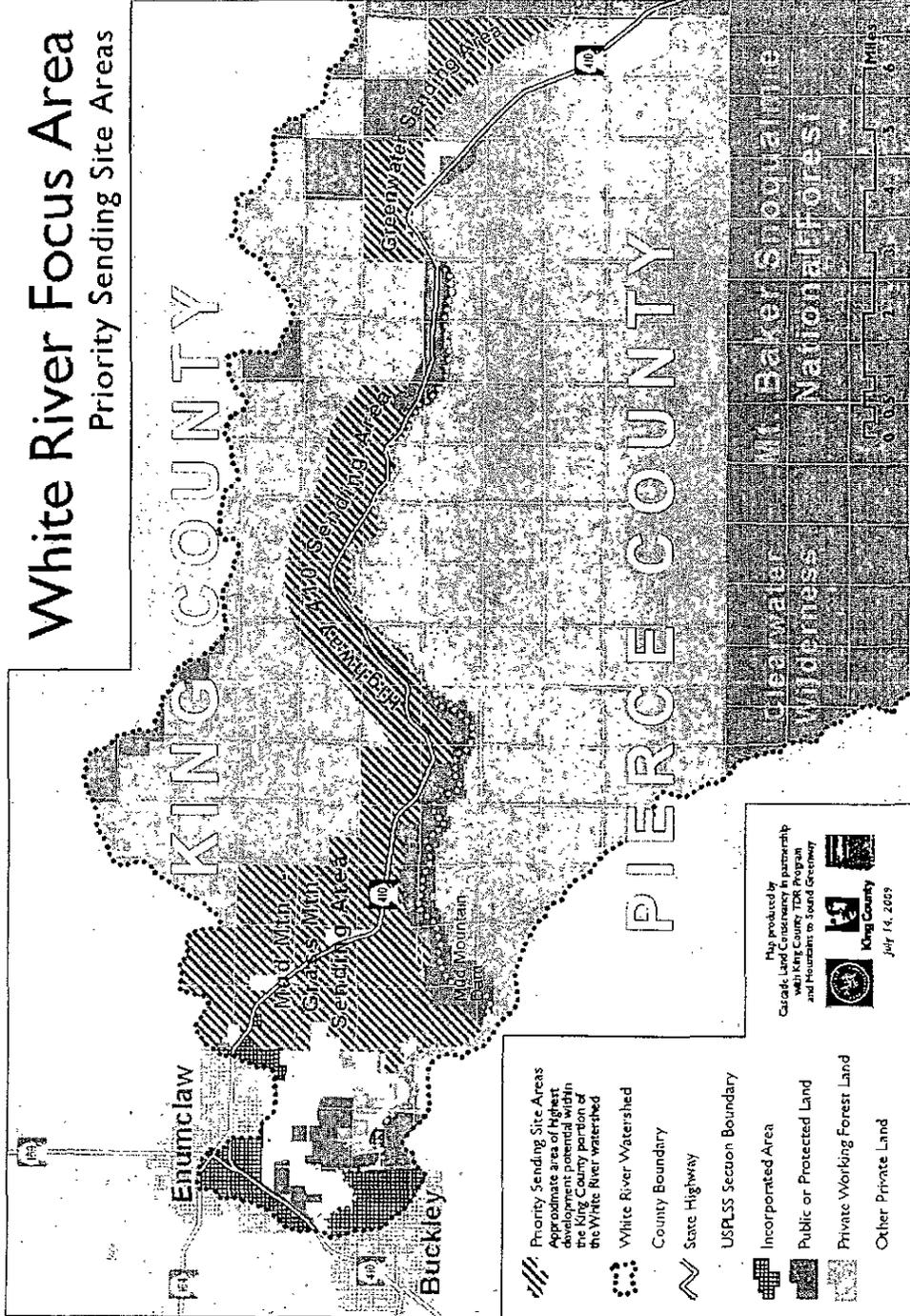
EXHIBIT A:
Regional TDR Sending Site Areas

GREENWAY FOCUS AREA



White River Focus Area

Priority Sending Site Areas



7/15/2009

EXHIBIT B:
Bel-Red Subarea and Land Use Districts
Bel-Red Land Use Districts, Bellevue LUC 20.25D.010 B

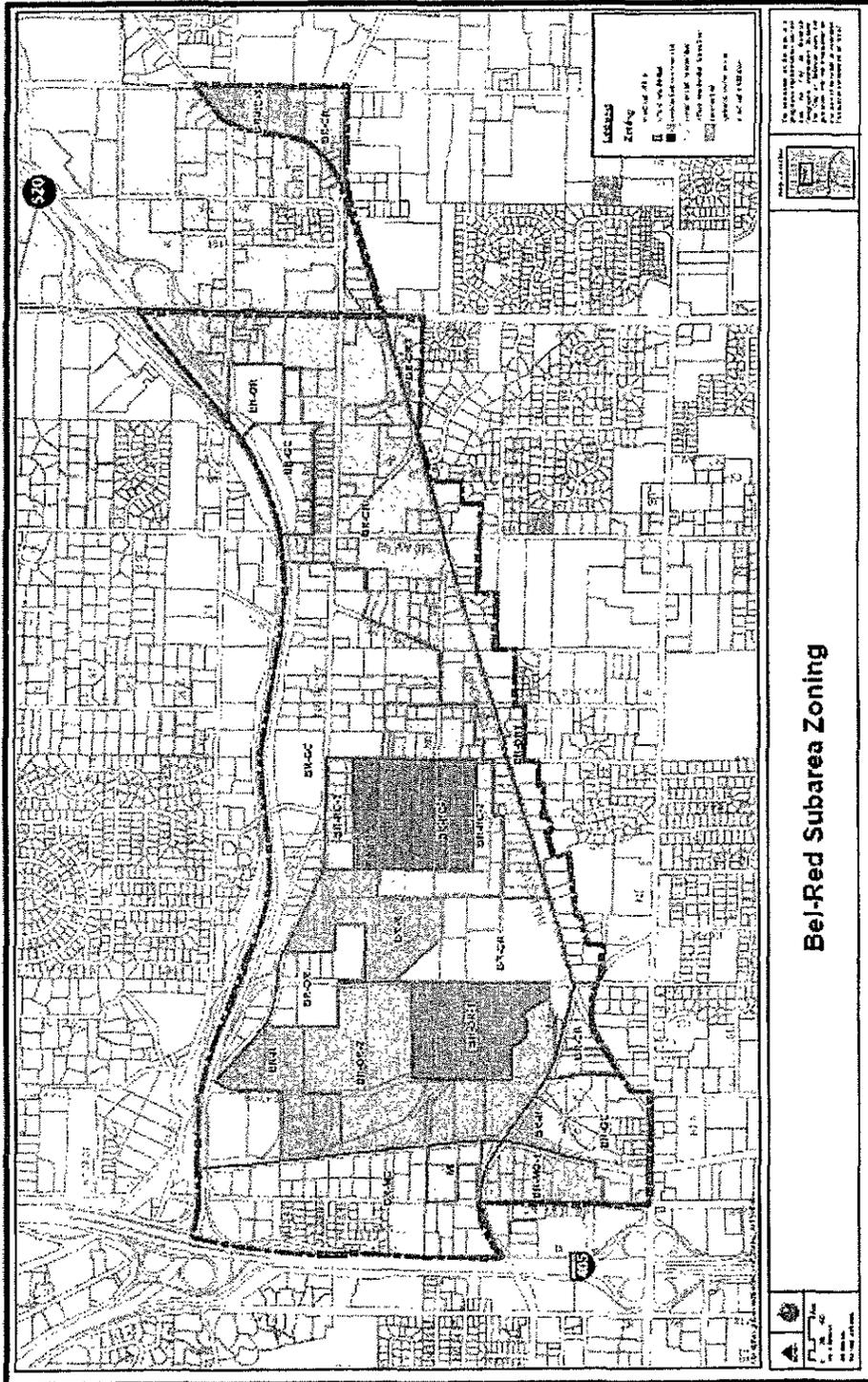
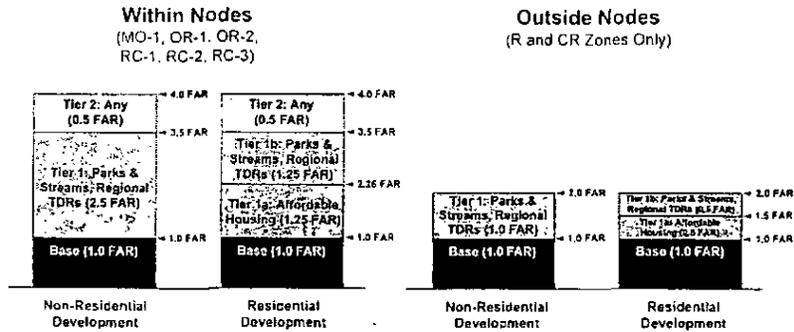


EXHIBIT C:
 Excerpts from Bel-Red FAR Amenity Incentive System.
 For full text of this section, see Bellevue LUC 20.25D.090

Tiered FAR Amenity Allocation
 Figure 20.25D.090.C



Note: Tier 1 bonus(es) must be fulfilled prior to pursuing Tier 2 bonus. Where applicable, Tier 1a bonus must be fulfilled prior to pursuing Tier 1b bonus.

Chart 20.25D.090.C FAR Amenity Incentive System

FAR AMENITY STANDARDS		
AMENITY (1)	APPLICABLE ZONES AND BONUS (3)	DESIGN CRITERIA
	MO-1, OR-1, OR-2, RC-1, RC-2, RC-3, CR, R	
TIER 1b		
<p>6. REGIONAL TRANSFER OF DEVELOPMENT RIGHTS (TDRs) Transfer of development rights to designated Bel-Red areas that achieve conservation of rural resource lands outside the Countywide Urban Growth Boundary.</p>	<p>1,333 sf bonus building area per TDR credit, or per Bellevue-King County TDR Interlocal Agreement as originally adopted or subsequently amended.</p>	<p>1. TDR credits defined in accordance with the King County TDR Program as approved or subsequently amended by the city pursuant to the Bellevue-King County TDR Interlocal Agreement. 2. TDR credits for use in the entire Bel-Red Subarea is limited to 75.</p>

2178-RES
7/16/2009

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 7954

A RESOLUTION authorizing execution of an Interlocal Agreement with King County regarding implementation of a regional transferable development rights program.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Manager or his designee is authorized to execute the Interlocal Agreement for the Implementation of a Regional Program to Transfer Development Rights from Rural Unincorporated King County to the Bel-Red Subarea in the City of Bellevue, a copy of which Interlocal Agreement has been given Clerk's Receiving No. _____.

Passed by the City Council this _____ day of _____, 2009, and signed in authentication of its passage this _____ day of _____, 2009.

(SEAL)

Grant S. Degginger, Mayor

Attest:

Myrna L. Basich, City Clerk