EXHIBIT "A"

AN AGREEMENT AUTHORIZING A TRANSFER OF DEVELOPMENT RIGHTS PROGRAM BETWEEN PIERCE COUNTY AND CITY OF TACOMA

THIS INTERLOCAL AGREEMENT is entered into this day by and between PIERCE COUNTY, a political subdivision of the State of Washington (herein referred to as "COUNTY") and the CITY OF TACOMA, a municipal corporation of the State of Washington (herein referred to as "CITY").

RECITALS

1. WHEREAS, the Washington State Growth Management Act (GMA), Chapter 36.70A Revised Code of Washington (RCW), directs development to urban areas, discourages inappropriate conversion of undeveloped rural land into sprawling, low-density development, and encourages the conservation of productive forest lands and productive agricultural lands and the protection of habitat lands; and

2. WHEREAS, the transfer of development rights (TDR) is one tool available to Washington communities to encourage the preservation of productive agricultural and forest lands and the protection of habitat lands while also promoting higher density, infill development within incorporated cities, consistent with the GMA and as provided in the Regional Transfer of Development Rights Program, Chapter 43.362 RCW; and

3. WHEREAS, the Washington State Legislature recognizes the importance of a regional transfer of development rights program; and

4. WHEREAS, the GMA requires the Central Puget Sound Region to adopt multi-county planning policies; and

5. WHEREAS, Vision 2040 was adopted in May 2008 as the Central Puget Sound Region guiding multi-county planning policies strategy; and

6. WHEREAS, Vision 2040 includes policies that encourage the use of transfer of development rights to focus growth within urban growth areas and to lessen pressure to convert rural and resource lands to more intense urban type development; and

7. WHEREAS, Countywide planning policies are required to be consistent with Vision 2040; and

8. WHEREAS, the GMA requires counties to adopt countywide planning policies in cooperation with cities; and
WHEREAS, the Pierce County Countywide Planning Policies direct jurisdictions in Pierce 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 adopted a TDR program through Pierce County Code (PCC) Title 18G - Conservation Programs; and

WHEREAS, the County TDR program requires the adoption of an interlocal agreement in order to authorize cities to receive development rights transferred from unincorporated rural and resource lands; and

WHEREAS, this Interlocal Agreement between the COUNTY and the CITY shall be consistent with all applicable adopted policies and regulations of PCC Title 18G - Conservation Programs; and

WHEREAS, this Interlocal Agreement provides for a framework that would allow for a transfer of development rights from rural and resource lands within unincorporated Pierce County to designated receiving areas in the CITY; and

WHEREAS, the COUNTY has a TDR bank that acquires development rights from high priority conservation lands for purchase within cities; and the TDR bank can play an important role to facilitate the City-County TDR market and is an integral part of the success of the Joint Program; and

WHEREAS, site specific transactions utilizing the COUNTY’s TDR Bank shall require an additional Agreement signed by both parties; and

WHEREAS, the rural and resource lands in Pierce County are recognized as containing important citywide, countywide and regional public benefits such as forestry, open space, wildlife habitat, agricultural resources, and salmon habitat; and

WHEREAS, the CITY has identified rural and resource lands in Pierce County as one of its preservation priorities; and

WHEREAS, the CITY’s development regulations identify certain areas within the Tacoma city limits to actively consider as potential receiving sites for development rights from Pierce County, as a means to achieve conservation and preservation of resource and rural lands and to direct growth to the CITY; and

WHEREAS, the CITY’S Downtown and Mixed-Use Centers call for density incentives for residential and commercial development, and seek to increase public amenities to improve the pedestrian, park and transit oriented development pattern in these areas; and

WHEREAS, the CITY and the COUNTY share an interest in creating an effective, cooperative development rights transfer system to achieve the goals of the GMA, the Pierce County Countywide Planning Policies, and the City of Tacoma and the Pierce County Comprehensive Plans; and
21. WHEREAS, the COUNTY and the CITY are authorized, pursuant to Article XI of the Washington State Constitution, Chapter 39.34 RCW and RCW 43.362.050 to enter into a governmental cooperation agreement to accomplish these shared goals;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, it is mutually agreed by and between the COUNTY and CITY as follows:

SECTION I. PURPOSE.
The purpose of this Interlocal Agreement is to provide for the transfer of development rights from Pierce County to the City of Tacoma and to memorialize the agreement between the parties relating to a Joint Program (hereafter the “Joint Program”) for the transfer of development rights from the Pierce County TDR Bank to the City; or from privately owned unincorporated Pierce County rural and resource lands.

SECTION II. CITY OBLIGATIONS
A. The CITY has adopted Ordinance No. 28087 to implement its Transfer of Development Rights Program. The City’s TDR Program provides incentives to protect selected sending site properties while authorizing additional residential density, commercial square footage, and other uses at selected receiving sites inside the city limits. The TDR implementation program is codified in Chapter 1.37 Tacoma Municipal Code (TMP).

B. The CITY has identified the COUNTY rural and resource lands pursuant to the COUNTY’s TDR Program, as codified in PCC Title 18G, as appropriate sending site areas and has identified the following COUNTY “Sending Sites” described below and as depicted in Exhibit A to this Agreement, as priorities for the transfer of development rights to the CITY:

  - Pierce County Farm Land: Farm land designated as Agricultural Resource Land (ARL) in unincorporated Pierce County situated in Pierce County’s Alderton-McMillin and Mid County Community Planning areas.

  - Pierce County Forest Land: Forest Land designated as Forest Land (FL) situated in unincorporated Pierce County.

C. The CITY has designated Downtown and Neighborhood Mixed-Use Centers as receiving areas within which transferable development rights credits may be used, as depicted in Exhibit B to this Agreement.

D. The CITY has adopted a receiving area ratio or ratios as provided for in Chapter 1.37 Tacoma Municipal Code for the transferable development rights or development rights credits to be received. These ratios shall be established for sending areas situated in unincorporated Pierce County as follows: One development right allows for 5,000 square feet of bonus area. The TDR manager shall recommend adjustments of the receiving area ratio or ratios as market conditions change in significant manner.

E. The CITY shall continue to permit the use of development rights at receiving sites within the CITY limits during the term of this Interlocal Agreement from priority sending sites identified in
Exhibit A unless other mutually agreeable sending sites are approved by the CITY and are consistent with PCC Title 18G.

F. The CITY agrees that development rights can be transferred from the Pierce County TDR Bank to the CITY or from privately owned unincorporated Pierce County rural and resource lands. Transfers to the CITY shall come from priority sending areas as depicted on Exhibit A unless other mutually agreeable sending sites are approved by the CITY and are consistent with PCC Title 18G.

G. The CITY shall notify the COUNTY in writing when it has approved the use of development rights that were purchased from private parties in a specific project. Upon approved use of COUNTY development rights on a specific receiving site within the CITY, the CITY shall ensure that the receiving site owner relinquishes the certificates to the COUNTY in conformance with PCC Title 18G.10 prior to issuing final building permits on the receiving site.

H. If the CITY intends to amend its transferable development rights program, as codified in Chapter 1.37 TMC, it shall notify the COUNTY in writing at least 14 days before officially adopting the amendment(s).

I. The CITY agrees to work in good faith with the COUNTY, private developers, and other receiving site landowners for the success of this Agreement.

J. The COUNTY and CITY agree to work in good faith to pursue grant funding for a Landscape Conservation and Local Infrastructure Program feasibility study to understand the benefits of the program to fund infrastructure improvements and to support conservation of farm and forest lands.

SECTION III. COUNTY OBLIGATIONS
A. The COUNTY adopted policies, regulations, and administrative procedures under PCC Chapter 18G.10 to implement the COUNTY Transfer and Purchase of Development Rights Program, which promotes and facilitates the purchase and sale of development rights. The COUNTY Program’s adopted policies and regulations are also consistent with the Joint Program.

B. The COUNTY will utilize PCC Title 18G to identify, qualify and certify sending sites for use by the CITY.

C. The COUNTY acknowledges the provisions of the CITY’S TDR implementation Ordinance are consistent with the intent and purposes of the Joint Program and this Interlocal Agreement.

D. If the COUNTY intends to amend its purchase of development rights and/or its transferable development rights program as codified in PCC Title 18G, it shall notify the CITY in writing at least 14 days before officially adopting the amendment(s).

SECTION IV. JOINT DEMONSTRATION PROJECT
A. The COUNTY agrees to work in good faith with the CITY, private developers, and designated sending site landowners for the success of this Agreement.
B. The COUNTY and CITY shall report back to their legislative bodies after the first transfer of
development rights transaction is completed and annually thereafter during the duration of this
Agreement.

SECTION V. DURATION
A. Duration. This Agreement shall become effective on the date it is last signed by all parties
and shall be reviewed once the CITY meets its conservation goals and has accepted 369 TDR
credits.

B. Extension. Pursuant to a mutual written agreement between the COUNTY Executive and
CITY Mayor, this Agreement may be extended for a mutually agreed upon period from the
effective date of the extension. To extend the 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 term of the extension. The parties must agree to the extension
in writing by the termination date or the agreement will lapse.

C. Either party can terminate this Agreement for convenience by providing the other party at
least thirty days written notice of its intent to terminate.

SECTION VI. ADMINISTRATION OF THE AGREEMENT.
This Agreement shall be administered for the CITY by the City Manager or his/her designee and
for the COUNTY by the County Executive, or his/her designee.

SECTION VII. INDEMNIFICATION AND DEFENSE.
A. The County shall defend, indemnify, and save harmless the CITY, its officers, employees,
and agents from any and all costs, claims, judgments, or awards of damages, resulting from the
acts or omissions of the COUNTY, its officers, employees, or agents associated with this
Agreement. In executing this Agreement, the COUNTY does not assume liability or
responsibility for or in any way release the CITY from any liability or responsibility which arises
in whole or in part from the existence or effect of CITY ordinances, rules, regulations,
resolutions, customs, policies, or practices. If any cause, claim, suit, action or administrative
proceeding is commenced in which the enforceability and/or validity of any such CITY
ordinance, rule, regulation, resolution, custom, policy or practice is at issue, the CITY shall
defend the same at its sole expense, and if judgment is entered or damages are awarded against
the CITY, the COUNTY, or both, the CITY shall satisfy the same, including all chargeable costs
and attorney's service charges.

B. The CITY shall defend, indemnify, and save harmless the COUNTY, its officers, employees
and agents from any and all costs, claims, judgments, or awards of damages, resulting from the
acts or omissions of the CITY, its officers, employees or agents associated with this Agreement.
In executing this Agreement, the CITY does not assume liability or responsibility for or in any
way release the COUNTY from any liability or responsibility which arises in whole or in part
from the existence or effect of COUNTY ordinances, rules, regulations, resolutions, customs,
policies, or practices. If any cause, claim, suit, action, or administrative proceeding is
commenced in which the enforceability and/or validity of any such COUNTY ordinance, rule,
regulation, resolution, custom, policy, or practice is at issue, the COUNTY shall defend the same
at its sole expense, and if judgment is entered or damages are awarded against the COUNTY, the
CITY, or both, the COUNTY shall satisfy the same, including all chargeable costs and attorney's service charges.

SECTION VIII. ASSIGNMENT. Neither the COUNTY nor the CITY shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other party.

SECTION IX. INDEPENDENT CONTRACTOR. Both the CITY and the COUNTY are, and shall at all times be deemed to be, an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the CITY and the COUNTY or any of the CITY and COUNTY's agents or employees. The CITY and the COUNTY shall each retain all its authority for rendition of services, standards of performance, control of personnel, and other matters incident to the performance of services pursuant to this Agreement.

SECTION X. NO THIRD PARTIES. This Interlocal 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.

SECTION XI. WAIVER. No waiver by either party of any term or condition of this Interlocal Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Interlocal Agreement.

SECTION XII. ENTIRE AGREEMENT. This Interlocal Agreement contains all of the Agreements of the Parties with respect to any matter covered or mentioned in this Interlocal Agreement and no prior agreements shall be effective for any purpose. It is the complete expression of the terms hereof and any oral representation or understanding not incorporated herein is excluded.

SECTION XIII. AMENDMENT. Provisions within this Interlocal Agreement may be amended with the mutual consent of the parties hereto. No additions to, or alteration of, the terms of this Agreement shall be valid unless made in writing, formally approved, and executed by duly authorized agents of both parties.

SECTION XIV. NOTICES. Any notice, approval or communication that either party is required to send under this Interlocal Agreement must be given in writing to the following addresses:

To City of Tacoma:

To Pierce County:

or to such other address as either party designates by written notice to the other.
SECTION XVI. SEVERABILITY. If any of the provisions contained in this Interlocal Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Interlocal Agreement to be executed on this 8th day of February, 2013.

CITY OF TACOMA

T.C. Broadnax
City Manager

Doris Sorum, City Clerk

Ricardo Noguera
Community and Economic Development Director

Steve Call, Interim Director
Finance Department

Debbie Dahlstrom, Risk Manager

 Approved as to form and legality:

Jeff Capell, Deputy City Attorney

ORIGINAL
PIERC E COUNTY

Date

DE P. PROSECUTING ATTORNEY Date
(as to legal form only)

Date

RISK MANAGEMENT Date

COUNTY EXECUTIVE Date

ORIGINAL

Exhibit A to Resolution No. R2012-125
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Exhibit B

- Downtown Mixed-Use Center
- Neighborhood Center Mixed-Use Center*

*Included Neighborhood Centers:
- 60th Ave & Pine St
- 38th & G
- 56th & STW
- Martin Luther King
- McKinley
- Narrows
- Stadium

Map Depicts City of Tacoma Priority Receiving Site Areas

City of Tacoma
Receiving Site Areas