

Ordinance No. 121928

Council Bill No. 115375

AN ORDINANCE relating to the acquisition and management of real property and property interests on the Cedar River below Landsburg Dam, in King County; authorizing Seattle Public Utilities to acquire specified properties or conservation easements and to accept applicable deeds; authorizing Seattle Public Utilities to enter into an agreement with Cascade Land Conservancy for land acquisition and management services; and authorizing Seattle Public Utilities to convey easements or stewardship assignments in connection with the Conservancy's management responsibilities.

CF No. _____

Date Introduced:	SEP - 6 2005	
Date 1st Referred:	SEP - 6 2005	To: (committee) Utilities & Technology
Date Re - Referred:		To: (committee)
Date Re - Referred:		To: (committee)
Date of Final Passage:	9-19-05	Full Council Vote: 8-0
Date Presented to Mayor:	9-20-05	Date Approved: 9/22/05
Date Returned to City Clerk:	9/23/05	Date Published: 3PAP <i>[initials]</i> T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoed by Mayor:		Date Veto Published:
Date Passed Over Veto:		Veto Sustained:

The City of Seattle - Legislative Department
Council Bill/Ordinance sponsored by: COMPTON

[Signature]
Councilmember

Committee Action:

JC: Yes JD: Yes ML: Yes

9-19-05 Passed 8-0 (Excused: Compton)

This file is complete and ready for presentation to Full Council. Committee: _____
(Initial/Date)

LAW DEPARTMENT

Law Dept. Review

OMP
Review

[Signature]
City Clerk
Review

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ORDINANCE 121928

AN ORDINANCE relating to the acquisition and management of real property and property interests on the Cedar River below Landsburg Dam, in King County; authorizing Seattle Public Utilities to acquire specified properties or conservation easements and to accept applicable deeds; authorizing Seattle Public Utilities to enter into an agreement with Cascade Land Conservancy for land acquisition and management services; and authorizing Seattle Public Utilities to convey easements or stewardship assignments in connection with the Conservancy's management responsibilities.

WHEREAS, under the Cedar River Habitat Conservation Plan dated April 21, 2000 ("HCP"); the City of Seattle (the "City") is obligated to expend specified amounts of money to protect, through 2050, fish habitat on the Cedar River below the City's Landsburg Dam, in King County; and

WHEREAS, the City, acting through Seattle Public Utilities ("SPU"), desires to fulfill its obligations under the HCP primarily by acquiring appropriate properties in fee simple or landowner conservation easements in such properties from willing sellers; and

WHEREAS, SPU has determined that it is most efficient and cost-effective if Cascade Land Conservancy ("CLC") negotiates for and manages the designated properties or property interests on behalf of SPU; and

WHEREAS, CLC is willing and able to provide the land acquisition and ongoing stewardship services that SPU requires, so long as fish habitat in the acquired properties can be protected permanently; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Director of Seattle Public Utilities or his designee (the "Director") is hereby authorized to execute the Agreement for Acquisition and Management of Fish Habitat (the "Agreement"), substantially in the form attached hereto as Attachment 1. Under the Agreement, (a) CLC, on behalf of the City, will negotiate and enter into purchase and sale agreements to acquire fee ownership of, or landowner conservation easements on, properties designated in Exhibit A to the Agreement, (b) CLC will assign the purchase and sale agreements to the City prior to closing, (c) if a landowner conservation easement has been acquired, the City

1 will enter into a stewardship assignment that obligates CLC to provide stewardship services for
2 the property for so long as the City holds the landowner conservation easement, but without
3 charge to the City after 2050, and (d) if a property has been acquired in fee simple and CLC has
4 so requested, the City will grant CLC a non-exclusive, permanent conservation-stewardship
5 easement that obligates CLC to provide stewardship services for so long as the City owns the
6 property, but without charge to the City after 2050. The City's obligation under clause (d) is
7 conditioned on CLC's payment of the difference in value of a conservation-stewardship
8 easement terminating in 2050 and that of a permanent easement. If CLC does not pay such
9 amount, the conservation-stewardship easement will terminate in 2050. The provisions of
10 Seattle Municipal Code chapter 20.50 do not apply to the property acquisition and management
11 services authorized by this ordinance.
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14 Section 2. With respect to the properties and conservation easements to be acquired by
15 the City, the Director of SPU is authorized to execute and accept deeds for fee ownership or
16 landowner conservation easements (the form of which easement is attached to the Agreement as
17 Exhibit C). The Director may accept said deeds on behalf of the City by indicating his written
18 acceptance thereon. The property so acquired shall be placed under the jurisdiction of SPU.
19

20 Section 3. The Director is authorized to grant conservation-stewardship easements to
21 CLC, substantially in the form set forth in Exhibit B to the Agreement, and to enter into
22 stewardship assignments, substantially in the form set forth in Appendix F of Exhibit C to the
23 Agreement.
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25 Section 4. The Director is authorized to execute such other documents and take such
26 actions as he or she deems necessary to accomplish the purposes of this ordinance. With respect
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1 to the forms of documents that are attached to the Agreement, the Director may make changes in
2 such forms as are consistent with the purposes of this ordinance.

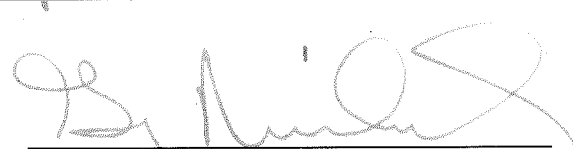
3 Section 5. Any act pursuant to and prior to the effective date of this ordinance is hereby
4 ratified and confirmed.

5
6 Section 6. This ordinance shall take effect and be in force thirty (30) days from and after
7 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days
8 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

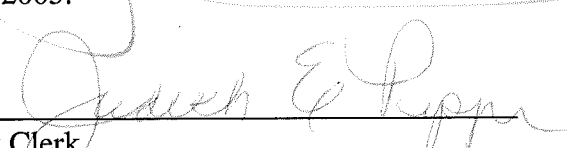
9 Passed by the City Council the 19th day of September, 2005, and signed by me in
10 open session in authentication of its passage this 19th day of September, 2005.
11

12 
13 President _____ of the City Council

14
15 Approved by me this 22nd day of September, 2005.

16 
17
18 Gregory J. Nickels, Mayor

19 Filed by me this 23rd day of September, 2005.

20 
21 City Clerk

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23 (Seal)
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1 ATTACHMENTS

2 Attachment 1 – Agreement for Acquisition and Management of Fish Habitat

3 Exhibit A – Potential Property Acquisitions

4 Exhibit B – Form of Conservation Easement from City to CLC

5 Exhibit C – Form of Conservation Easement from Landowner to City (with Stewardship
6 Assignment as Appendix F)

7 Exhibit D – Form of Real Estate Purchase and Sale Agreement

8 Exhibit E – Form of Notice of Feasibility

9 Exhibit F – Form of Notice of Assignment

10 Exhibit G – Form of Assignment of Real Estate Purchase and Sale Agreement

AGREEMENT FOR ACQUISITION AND MANAGEMENT OF FISH HABITAT

This Agreement for Acquisition and Management of Fish Habitat (the "Agreement") is entered into as of the 26th day of September, 2005, by and between The City of Seattle, a municipal corporation of the State of Washington, acting by and through Seattle Public Utilities (the "City"), and Cascade Land Conservancy, a Washington nonprofit corporation ("CLC"). The City or CLC may be referred to herein as a "Party" and both as the "Parties."

Recitals

A. As a party to the Cedar River Watershed Habitat Conservation Plan dated April 21, 2000, as may be amended or supplemented from time to time ("HCP"), the City has made a commitment to contribute specified amounts of money to acquire, restore, enhance and/or protect high quality spawning, rearing or refuge habitat for anadromous fish species, and the natural features and processes sustaining such habitat, along the mainstem of the lower Cedar River below Landsburg Dam ("Fish Habitat") until the expiration of the HCP on December 31, 2050.

B. The City has identified properties that meet the requirements and objectives of the HCP. These properties are listed in **Exhibit A** hereto.

C. CLC's charitable mission is to protect our region's wild and open space lands to sustain the natural beauty and health of the environment, now and for generations to come.

D. CLC desires to assist the City in protecting Fish Habitat by acquiring, managing and protecting properties from the list in **Exhibit A**, as it may be amended from time to time (the "Program"). The Program is consistent with and supports CLC's mission.

E. In accordance with its mission, CLC desires to permanently preserve the Fish Habitat on properties acquired by the City in fee simple under the Program. To accomplish perpetual preservation, CLC would pay the difference between the present value of each such property subject to a perpetual conservation-stewardship easement and the present value of each such property subject to a conservation-stewardship easement terminating on December 31, 2050 (as further described in Section 2.G(iii), the "CLC Portion").

Now, therefore, in consideration of the mutual promises contained herein, the Parties agree as follows:

Agreement

Section 1. Effective Date and Termination

FILED
CITY OF SEATTLE
05 SEP 29 PM 1:38
CITY CLERK

This Agreement shall be in full force and effect beginning on the date provided above ("Effective Date") and shall expire upon written notice from the City to CLC that the acquisition phase of the Program has ended in accordance with section 2. Either Party may terminate this Agreement upon thirty (30) days written notice to the other Party; provided, that all obligations incurred prior to the date of termination shall survive until fulfilled. In the event of such termination by CLC, any then-existing City Conservation Easements or City Stewardship Assignments (each as hereinafter defined) shall terminate automatically, regardless of whether CLC has paid the CLC Portion. In the event of such termination by the City, the City may leave any then-existing City Conservation Easements or City Stewardship Assignments in effect or, in the City's sole discretion, require their termination. For City Stewardship Assignments and those City Conservation Easements for which CLC has not paid the CLC Portion, termination shall be effective upon notice from the City. For City Conservation Easements for which the CLC Portion has been paid, termination shall be effective upon the City's reimbursement of the CLC Portion with interest at the rate of 4.5% per annum. Upon request, CLC shall execute such documents as the City reasonably requests to evidence termination of City Conservation Easements or City Stewardship Assignments, and the City may record such documents. Notwithstanding the foregoing, City Conservation Easements and City Stewardship Assignments may be terminated by the City for cause in accordance with the terms of such instruments.

Section 2. Property Acquisition Projects

A. The acquisition phase of the Program shall begin on the Effective Date and shall end on the earlier of the date on which the City has expended \$3,000,000 in Acquisition Costs (as defined in Section 3.B) for Acquisition Projects (as defined in Section 2.F) or July 31, 2007; provided that such dollar amount may be increased and/or such date extended or thereafter at the written request of the City. During this time, CLC shall seek to acquire interests in land only from among those properties listed in **Exhibit A** or, with the prior written approval of the City, CLC may acquire interests in other parcels that contain Fish Habitat and are contiguous with parcels in **Exhibit A** that previously have been acquired under this Agreement (each, a "Potential Property" and collectively the "Potential Properties"). CLC agrees to make diligent efforts to acquire the Potential Properties from willing landowners in the time and manner contemplated by this Agreement. CLC agrees to subcontract the acquisition of half the Acquisition Projects (as defined in Section 2.F) to Open Space Resources of Langley, Washington ("OSR") in accordance with Section 2.G(i). CLC and OSR shall responsibly coordinate the management of the Acquisition Projects; provided, that all agreements pertaining to the Acquisition Project shall be executed by CLC and all third-party costs shall be billed to CLC. CLC shall bill the City for OSR's work, plus a 7.5% administrative fee and the cost of preparation of the Present Conditions Report (as hereinafter defined), all in accordance with Section 3 and/or 4, as applicable. With respect to Acquisition Projects managed by OSR, CLC shall not charge the City for any CLC Administrative Costs (as hereinafter defined) other than the 7.5% fee and the cost of the Present Conditions Report.

B. The Parties shall confer on a quarterly basis, or more frequently as needed, to identify, from within the list of Potential Properties, those properties to be given priority in the acquisition process (each a "Priority Property" and collectively the "Priority Properties"). After each such consultation, CLC shall prepare a list of such Priority Properties, identifying which Priority Property acquisitions will be managed by CLC and which will be managed by OSR, and indicating any priority ranking within such Priority Properties. The City shall provide written approval of the then-current list of such Priority Properties. Once the acquisition process has begun, CLC will conduct weekly telephone briefings and bi-monthly in-person meetings with OSR and City staff managing the Program throughout the acquisition phase. During these briefings and meetings, CLC will provide the City with information about active projects, including parcel number, location, progress on negotiations with landowners, title report findings and related issues needing to be resolved, appraisal findings, and any other information relevant to the current land acquisition projects. In the event that two Priority Properties with different priority rankings are both available, and funds are limited, the Priority Property with the higher ranking will take precedence.

C. The Parties agree that, in most instances, the City's habitat protection goals under the HCP can be accomplished most efficiently and economically as follows: (i) CLC enters into a purchase and sale agreement to acquire fee ownership of a Priority Property; (ii) CLC assigns its interests in the purchase and sale agreement to the City prior to closing (as set forth in Exhibit G, the "PSA Assignment"); (iii) the City closes on acquisition of the Priority Property ("Acquired Property"); (iv) the City conveys to CLC at closing a non-exclusive term conservation-stewardship easement, expiring on December 31, 2050, over the Acquired Property that provides for management and preservation, and potential enhancement and restoration, of Fish Habitat on the Acquired Property; and (v) CLC manages the Acquired Property in accordance with the terms of such easement; provided, that if CLC pays the CLC Portion applicable to a particular Acquired Property, the City shall convey to CLC at closing a non-exclusive perpetual (rather than term) conservation-stewardship easement subject to the termination provisions therein. The general form of the conservation-stewardship easement is shown in **Exhibit B** (the "City Conservation Easement"). The Parties may also enter into a separate property-specific enhancement and/or restoration agreement for any Acquired Property that provides for CLC's active enhancement and/or restoration of Fish Habitat on the Acquired Property.

D. Alternatively, when the owner of a Priority Property does not wish to convey fee title, the Parties may proceed as follows: (i) CLC enters into a purchase and sale agreement to acquire a permanent conservation easement over a Priority Property that specifies the permissible and impermissible uses of such property, including potential habitat enhancement or restoration, and provides for enforcement rights with respect to protection of Fish Habitat; (ii) CLC assigns its interest in the purchase and sale agreement to the City prior to closing pursuant to the PSA Assignment; (iii) the City closes on acquisition of the

conservation easement over the Priority Property ("Acquired Easement Property"); (iv) the City assigns to CLC at closing specified stewardship responsibilities, as well as any habitat enhancement or restoration rights that may be appropriate under the conservation easement for the Acquired Easement Property through a stewardship assignment that continues in effect for so long as the City holds the conservation easement, subject to the termination provisions therein; and (v) CLC manages the Acquired Easement Property as provided in the stewardship assignment. The general form of such easement and assignment is shown in **Exhibit C** hereto and referred to as a "Landowner Conservation Easement" and "City Stewardship Assignment." CLC may make material changes to the form Landowner Conservation Easement and City Stewardship Assignment for a given Priority Property only upon the prior written approval of the City. The Parties may also enter into a separate property-specific enhancement and/or restoration agreement for any Acquired Easement Property that provides for CLC's active enhancement and/or restoration of Fish Habitat on the Acquired Easement Property. Except as noted herein, the property acquisition, funding and closing procedures outlined in Sections 2 through 4 of this Agreement are the same regardless of whether fee title or a Landowner Conservation Easement is being acquired.

E. CLC shall enter into a purchase and sale agreement to acquire each Priority Property in fee simple, except where the Parties determine in consultation to acquire a Landowner Conservation Easement and the City provides written direction to do so. The form of purchase agreement for acquisition of either fee title or a Landowner Conservation Easement is shown in **Exhibit D** hereto and referred to as a "Purchase and Sale Agreement." CLC may make material changes to the form Purchase and Sale Agreement for a given Priority Property upon prior written approval of the City.

F. Whether or not CLC is successful in acquiring a Priority Property, the process that commences with an owner's expression of interest in selling an interest in its Priority Property to CLC and ends (if acquired) with the City's receipt of title or a Landowner Conservation Easement, as appropriate, and CLC's receipt of a City Conservation Easement or City Stewardship Assignment, as appropriate, is referred to herein as an "Acquisition Project." If a Priority Property is not acquired, an Acquisition Project ends when CLC sends written notice to the City that the Priority Property cannot be acquired or the City sends CLC written notice that the City declines to proceed with that acquisition. If the City, through the process outlined below, declines to proceed with acquisition of a Priority Property, CLC may proceed, at its sole expense and on its own behalf and not on behalf of the parties, with acquisition of that Priority Property.

G. For each Acquisition Project, the sequence and schedule of activities, each of which must be completed before the next is undertaken, shall be as follows:

i) Within 15 working days after the Effective Date, CLC shall send a letter of introduction to the owner of each Priority Property and follow up with a personal contact

to see if the owner is interested in pursuing a possible sale of an interest in its Priority Property to CLC. For each owner that does not respond within 10 days to the letter of introduction, CLC shall promptly send a second letter. As CLC receives expressions of landowner interest, CLC shall allocate half the Acquisition Projects to OSR; provided, with the prior written consent of the City, such allocation may be changed.

ii) CLC shall enter into a Letter of Intent with a willing landowner.

iii) Using an MAI appraiser approved by the City, CLC shall obtain an appraisal establishing the fair market value of the fee or Landowner Conservation Easement interest in the Priority Property, as appropriate, assuming highest and best use. If the Letter of Intent contemplates sale of the property in fee simple, the appraisal shall determine the difference between (a) the present value of the property subject to a perpetual easement to protect Fish Habitat and (b) the present value of such property subject to an easement to protect Fish Habitat terminating on December 31, 2050. In determining the values described in clauses (a) and (b) above, the appraiser shall use a discount rate of 4.5%. The difference between the two present values shall be the CLC Portion, which shall be paid by CLC at the closing of the acquisition of the Priority Property, if CLC desires to obtain a perpetual, rather than term, City Conservation Easement.

iv) CLC shall make an offer, provided that CLC shall obtain the written approval of the City before making an offer (a) if the appraised value is more than Two Hundred Fifty Thousand Dollars (\$250,000) or (b) if the Priority Property contains a structure, building, paved road, or formally approved trail.

v) CLC shall negotiate a Purchase and Sale Agreement. Before entering into the negotiated Purchase and Sale Agreement, CLC shall, within 5 working days of negotiating the Purchase and Sale Agreement, provide the City with a copy of the proposed Purchase and Sale Agreement for its approval.

vi) Within 5 working days of receiving the proposed Purchase and Sale Agreement from CLC, the City shall send, by electronic mail its approval or disapproval of the Purchase and Sale Agreement to CLC.

vii) Within 30 working days of the effective date of the Purchase and Sale Agreement, CLC shall commission and review a property title report and Environmental Assessment(s) with companies approved by the City, shall complete such other due diligence tasks necessary to decide whether or not to remove Buyer's Feasibility Contingency under the Purchase and Sale Agreement, and provide written notice to the City, in the form of **Exhibit E** hereto, containing CLC's conclusions with respect to due diligence tasks, the Environmental Assessment, title report and other documents developed or obtained by CLC,

and CLC's recommendation on whether or not to proceed with acquisition of the Priority Property ("Notice of Feasibility").

For any Acquisition Project in which the Phase 1 Environmental Assessment recommends a Phase 2 Assessment, CLC shall, within five (5) working days of receipt of the Phase 1 Assessment, make a recommendation to the City regarding whether to continue with the Acquisition Project and complete a Phase 2 Assessment, or terminate the Acquisition Project. The City shall, within five (5) working days of receiving CLC's recommendation, provide written direction to CLC whether to proceed with or terminate the Acquisition Project; provided, that, for Acquisition Projects where CLC recommends proceeding with the Acquisition Project, the City shall be deemed to have approved proceeding with the Acquisition Project unless the City, in writing, disapproves or provides conditions within the time period established by this section. If the City directs CLC to proceed with the Acquisition Project, and if necessary under the Purchase and Sale Agreement, CLC shall make a diligent effort to extend the Buyer's Feasibility Contingency period under the Purchase and Sale Agreement in order to conduct a Phase 2 Environmental Assessment. As used in this Agreement, "Environmental Assessment" means, collectively, an evaluation commonly known as and consistent with federal guidelines regarding "Phase 1 Environmental Site Assessments" and, if so indicated by the Phase 1 assessment, a "Phase 2 Environmental Site Assessment," as well as any additional environmental evaluation CLC deems necessary.

viii) Within 10 working days of receipt of the Notice of Feasibility and accompanying documents, the City shall approve, disapprove or provide any conditions to removing the Buyer's Feasibility Contingency and proceeding with the Acquisition Project, provided that the City shall be deemed to have approved CLC's removal of Buyer's Feasibility Contingency and proceeding with the Acquisition Project unless the City, in writing, disapproves or provides conditions within the time period established by this section. CLC shall pay into escrow the amount due on the earnest money promissory note upon the removal of Buyer's Feasibility Contingency, in accordance with the Purchase and Sale Agreement.

ix) Within 15 working days of the removal of Buyer's Feasibility Contingency under the Purchase and Sale Agreement, CLC shall prepare the Present Conditions Report (as defined below) and other closing documents listed in **Exhibit F** hereto (the "Notice of Assignment") and provide the Notice of Assignment, and accompanying documents, to the City for review and approval.

x) Within 10 working days of receipt of the Notice of Assignment, and accompanying documents, the City shall, in writing, approve, disapprove or request reasonable modifications to the Present Conditions Report and closing documents.

In the event the City requests modifications to the Present Conditions Report or the draft closing documents, the Parties shall confer and attempt to accommodate such requests within five (5) working days.

xi) No less than 10 working days prior to the date set for closing in the Notice of Assignment, the City and CLC shall execute the PSA Assignment and final closing documents and proceed to closing.

Each Acquisition Project shall be conducted pursuant to all applicable Federal, State and local laws. Notwithstanding any other provision of this Agreement to the contrary, an Acquisition Project shall terminate if the City denies approval when it has been requested pursuant to this subsection H or if the Parties cannot agree on the documents described in clause ix) above.

H. For each Acquisition Project, CLC shall maintain communication with the landowner and shall document all landowner contacts through a contact log.

I. CLC shall deliver to the City on each Acquisition Project, according to the schedule established in Section 2.G above, a report documenting the relevant features, current uses and state of improvement on each Priority Property, including the Fish Habitat ("Present Conditions Report"). The Present Conditions Report shall contain a complete and accurate description of such Priority Property. Each report shall contain the following types of information, subject to modification by agreement of the Parties:

Physical and Natural Site Features (narrative)

- River, riverbanks, floodplain/off-channel habitats, current fish use
- Vegetation types and conditions, topography
- Visible natural processes supporting Fish Habitat (e.g. naturally eroding bank, spring, area of treefall)
- Observed plant and animal species
- Special or unique features (e.g., a notable outcrop, old grove of trees, especially deep pool, rare/unusual species)
- Existing structures/improvements (e.g., fence, footpath, nearby roads)
- Adjacent land uses/features
- Potential threats to Fish Habitat (e.g. invasive species, likely location of encroachments)
- Potential future land management and restoration actions (e.g. deal with invasive plant species)

Real Estate Information (narrative)

- Legal description
- Existing boundary/survey markers if present
- Assessor's Parcel Number

- Zoning
- Acreage
- Encumbrances/other easements
- Improvements (such as structure, building, paved road or formally approved trail)
- Driving directions

Maps/Figures (graphic)

- Vicinity map
- Schematic site map (showing the most obvious site and real estate features described above)
- Photopoint locations and direction
- Photos of the property from the photopoints
- Photos of specific site features as applicable

Stewardship Activities and Costs (narrative)

- CLC land management activities to be performed for prompt post-closing implementation, associated costs and recommended timeline for same (e.g., demolition of structures, removal of debris) to be required under and reimbursed through the terms of PSA Assignment
- On-going and site-specific land management activities to be performed by CLC (e.g., dealing with specific invasive plant species), which will also be described in detail in the City Conservation Easement or City Stewardship Assignment, as appropriate
- Recommended habitat enhancement or restoration activities, that may be addressed in a separate City-CLC enhancement and/or restoration agreement
- Projected total Stewardship Costs (costs of all long-term land management activities required under the City Conservation Easement or City Stewardship Assignment, as appropriate), under the formula provided in Section 5

K. Each Acquisition Project shall be funded and closed in accordance with Sections 3 and 4 hereof.

Section 3. Funding of Acquisition Projects

A. For each Acquisition Project, whether or not a fee interest or conservation easement in a Priority Property actually is acquired, the City shall pay the total Acquisition Costs (as defined below) actually incurred by CLC for the Acquisition Project, provided, that the City's obligation to pay non-purchase price Acquisition Costs shall be limited in accordance with the terms of this Agreement and, provided further, that the City's total monetary obligation for all Acquisition Costs (including without limitation Purchase Price) shall not exceed \$3,000,000, unless the City requests the increase of such amount in writing.

B. For each Acquisition Project, "Acquisition Costs" means:

(i) The Purchase Price (as defined in the Purchase and Sale Agreement) for the Acquired Property or Acquired Easement Property, as applicable, which Purchase Price (minus the Earnest Money Deposit already paid by CLC) the City shall pay through escrow to the Seller of the Priority Property;

(ii) "Closing Costs" consisting of the premium on a standard purchaser's policy of title insurance, recording fees, escrow fees and other closing costs (which the City shall pay through escrow in accordance with the terms of the Purchase and Sale Agreement);

(iii) "Assignment Fee" consisting of:

(a) "CLC Out-of-Pocket Costs" consisting of actual out-of-pocket costs for OSR's work, if applicable (not to exceed \$7,500), appraisal (except for costs for determination of the CLC Portion), title search, environmental assessments, reasonable attorneys' fees (not to exceed \$500) and, with prior City approval, other third-party costs related or necessary to an Acquisition Project; and

(b) "CLC Administrative Costs" consisting of CLC staff and overhead costs associated with an Acquisition Project, consisting of (y) 7.5% of OSR's costs and the cost, not to exceed \$3650, for the preparation of the Present Conditions Report or (z) pre-acquisition costs related to landowner follow-up, an initial landowner meeting and site visit and negotiation of contracts for third-party services; negotiation costs related to drafting and entering into a letter of intent, commissioning and reviewing an appraisal, drafting and negotiating a purchase agreement, commissioning and reviewing an environmental site assessment, commissioning and reviewing a title commitment, conducting due diligence, interfacing with the landowner and the City, preparing a Present Conditions Report and closing the transaction. CLC shall prepare the Present Conditions Reports for all acquired properties, including those acquisitions managed by OSR, and

(c) "CLC Earnest Money Deposit" (as defined in the Purchase and Sale Agreement).

C. CLC and the City agree that for each Acquisition Project:

(i) Without prior written approval from the City, the total amount of CLC Out-of-Pocket Costs for a given Acquisition Project for which CLC shall be entitled to reimbursement shall not exceed \$11,000, whether or not the Acquisition Project closes; and

(ii) Without prior written approval from the City, and in accordance with the rate schedule set forth below (as may be reasonably adjusted by the Parties if the acquisition phase

extends beyond July 31, 2007), the total amount of CLC Administrative Costs for a given Acquisition Project for which CLC shall be entitled to reimbursement shall not exceed \$12,000, whether the Acquisition Project closes or does not close, without prior approval from the City. Hourly rates charged by CLC for CLC staff time shall be as follows:

Senior Conservation Director:	\$100/hour
Project Manager:	\$ 75/hour
Stewardship Project Manager	\$ 75/hour
Deputy Director:	\$150/hour
Administrative Assistant:	\$ 50/hour

(iii) For all CLC Administrative Costs and CLC Out-of-Pocket Costs for which CLC seeks reimbursement, CLC shall submit an invoice containing documentation reasonably acceptable to the City. Documentation shall, at the minimum, provide the following detail: staff person(s), hourly rate, and number of hours worked, broken down by individual Acquisition Project; copies of invoices from OSR and associated CLC administrative fee charged; and copies of invoices for out-of-pocket costs charged to CLC.

Notwithstanding any provision of this Agreement to the contrary, the City assumes no obligation for costs related to a Priority Property that are incurred subsequent to the City's written disapproval of an Acquisition Project pursuant to Sections 2.F or 2.G hereof. If CLC decides to acquire a Priority Property after the City has declined to do so, the City shall have no obligation for the purchase price or any costs incurred by CLC with respect to that Priority Property subsequent to the City's written disapproval.

D. CLC and the City agree that for each Acquisition Project that closes, the parties shall make the following payments into escrow: (i) in accordance with the terms of the PSA Assignment and this Agreement, the City shall pay the Acquisition Costs, provided that the component costs have been documented to the reasonable satisfaction of the City and (ii) CLC shall pay the CLC Portion, but only in connection with acquisition of an Acquired Property. In the event that the City disputes any portion of the invoice for such costs, the City shall deliver into escrow the undisputed portion of the invoice, and that Acquisition Project shall proceed to closure.

E. CLC and the City agree that for each Acquisition Project that does not close, CLC Out-of-Pocket Costs and CLC Administrative Costs shall be paid to CLC as provided for in Section 4.B.

F. The City and CLC recognize that certain Acquisition Projects may include "CLC Immediate Property Management Costs" consisting of costs for near term post-closing management actions on the Acquired Properties or Acquired Easement Properties as appropriate (such as demolition of structures, removal of debris and the like). The PSA

Assignment for a given Acquisition Project shall address any near term post-closing management actions on the Acquired Property that have been approved by the City and the agreed-upon schedule and associated costs for undertaking the actions. CLC and the City agree that for each Acquisition Project that involves CLC Immediate Property Management Action Costs, such costs shall be paid to CLC as provided for in Section 4.B.

G. The City will pay a portion of the legal costs that CLC has incurred in developing this Agreement, as follows: within thirty (30) days of the Effective Date of this Agreement, the City will pay CLC Twenty-Four Thousand Dollars (\$24,000), representing approximately seventy-five percent of such legal costs through May 31, 2005; provided that on or prior to the Effective Date the City has received reasonable documentation of such costs.

H. CLC shall be responsible for paying all fees, salaries, wages and other benefits of any CLC employee, consultant or subcontractor who is performing services related to in this Agreement. CLC shall cover CLC employees performing work under this Agreement as required by the State of Washington Industrial Insurance Act.

Section 4. Closing; Payment Procedures

A. Escrow Closings. On or before the closing date, the City and CLC each shall deliver the executed documents specified in the Notice of Assignment to the escrow company approved by the City, the City shall wire the Acquisition Costs to the escrow account in accordance with the escrow instructions and CLC shall, if it desires a perpetual City Conservation Easement, wire the CLC Portion to the escrow account in accordance with the escrow instructions.

B. Other Acquisition Costs. All Acquisition Costs that are not paid pursuant to Section 4.A (i.e., Acquisition Costs associated with Acquisition Projects that do not close) and CLC Immediate Property Management Action Costs shall be paid as follows. Once each quarter, together with the quarterly acquisition reports described in Section 6.A below, CLC shall send to the City a notice listing: (i) Acquisition Projects that are no longer being pursued and the reasons therefor, together with an invoice to the City providing detailed documentation of Acquisition Costs for such Acquisition Projects yet unpaid, in each case incurred in accordance with this Agreement, and requesting payment of all such costs that are within the limits set forth in this Agreement; and (ii) those near term post-closing management actions on Acquired Properties or Acquired Easement Properties that have been completed, together with an invoice to the City providing detailed documentation of CLC Immediate Property Management Action Costs that have been incurred, in each case in accordance with this Agreement, and requesting payment of all such costs that are within the limits set forth in the PSA Assignments for the Acquired Properties or Acquired Easement Properties. The City shall, within thirty (30) days of receipt of an invoice documented to the City's reasonable satisfaction and in accordance with this Agreement, reimburse CLC in

accordance with this Section 4.B. In the event that the City disputes any portion of the invoice, the City shall remit the undisputed portion within the time herein specified, with an explanation of the disputed matter.

Section 5. City Conservation Easements, City Stewardship Assignments and Stewardship Costs

A. In accordance with the procedures set forth in Section 2, the City shall either (i) grant and convey to CLC a City Conservation Easement (either perpetual or expiring on December 31, 2050) for each Acquired Property restricting the uses of the Acquired Property to uses that are consistent with preserving and protecting Fish Habitat and requiring specified monitoring and management actions on the Acquired Property, substantially in the form of **Exhibit B** hereto with the property-specific information inserted, and with such other changes as may be agreed to by the Parties, or (ii) deliver to CLC an executed City Stewardship Assignment under a Landowner Conservation Easement for each Acquired Easement Property (continuing in effect for so long as the City holds the Landowner Conservation Easement), authorizing CLC to monitor the City's rights thereunder, and requiring CLC to exercise specified management actions thereunder, substantially in the form of **Exhibit C** hereto with the property-specific information inserted, and with such other changes as may be agreed to by the Parties. CLC and the City shall manage and maintain each Acquired Property and Acquired Easement Property in accordance with the applicable City Conservation Easement or Landowner Conservation Easement and City Stewardship Assignment, as appropriate, and all applicable Federal, State and local laws.

B. CLC and the City agree that the annual cost of monitoring, maintenance and stewardship for each Acquired Property or Acquired Easement Property through December 31, 2050 shall be \$3,000 (in 2005 dollars), prorated for a portion of a year and adjusted for inflation by use of the Consumer Price Index or, when such index is unavailable, by use of recent Consumer Price Indices. Examples of inflation adjustments are shown in **Schedule 1** hereto. No later than December 31 of each year of the term of this Agreement (but in no event later than December 31, 2050), CLC shall send the City an invoice, documented to the City's reasonable satisfaction, for monitoring, maintenance and stewardship of all Acquired Properties and Acquired Easement Properties, and the City shall pay such invoice within 30 days of receipt of such invoice. Beginning January 1, 2051, the City no longer shall pay any portion of the monitoring, maintenance and stewardship fees specified in this Section 5.B, but for so long as the City owns an Acquired Property or holds a Landowner Conservation Easement on an Acquired Easement Property, CLC shall continue to provide monitoring, maintenance and stewardship of such property in accordance with the City Conservation Easement or the City Stewardship Assignment, as applicable. Notwithstanding the preceding sentence, on and after January 1, 2051, Grantee in its sole discretion may release the City Conservation Easement and terminate the City Stewardship Assignment, thereby terminating Grantee's obligations thereunder, by giving thirty (30) days prior written notice of same to Grantor. In the event of

any conflict between the terms of this section 5 and those of the City Conservation Easement or City Stewardship Assignment, the latter documents shall control.

Section 6. Reporting

A. Quarterly Acquisition Reports. Until all Acquisition Projects have terminated, CLC shall report to the City within thirty (30) days of the end of each March, June, September and December. The report shall contain the following information: (i) the status of Acquisition Project activities relating to each Priority Property listed in **Exhibit A** that has not been acquired as of the date of the report, including dates and nature of contacts made with landowners and/or their representatives, and Acquisition Costs incurred to date; (ii) total Acquisition Costs and CLC Immediate Management Actions Costs on all Acquisition Projects completed to date; and (iii) other relevant information requested by the City for the purpose of determining compliance with this Agreement.

B. Final Report. Within ninety (90) days following the earlier of a) expiration of the acquisition phase provided for under Section 2.A hereof or b) termination of this Agreement, CLC shall provide the City with a final report that summarizes the information provided in the quarterly acquisition reports.

C. Land Management Reports. No later than December 31 of each year during the term of this Agreement, CLC shall provide the City with a report, as described in the City Conservation Easements and City Stewardship Assignments, summarizing its activities during the previous year in managing the Acquired Properties and Acquired Easement Properties.

Section 7. Hold Harmless and Indemnification

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

B. CLC shall protect, defend, indemnify and save harmless the City and its officers, employees, agents and contractors, and their successors and assigns (collectively, the "Indemnified Parties") from and against any and all liabilities, penalties, losses, costs, damages, claims, causes of action, demands or judgments, or awards of damages, including reasonable attorneys' fees, arising out of or in any way connected with a breach of this Agreement by CLC, its officers, agents or employees, negligent action or inaction of CLC, its

officers, agents or employees in the acquisition or stewardship of Priority Properties, or their failure to comply with all applicable laws. For purpose of this Agreement only, CLC waives the immunity granted it for industrial insurance claims pursuant to Revised Code of Washington Chapter 51 to the extent necessary to extend its obligations under this section to any claim, demand, or cause of action brought by or on behalf of any employee of CLC, including judgments, awards and costs arising therefrom and including attorney's fees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

Section 8. Representations and Warranties

CLC and the City each represent and warrant, as of the Effective Date and the date of each closing on an Acquired Property or Acquired Easement Property, that it (i) has all requisite authority to enter into this Agreement and to complete the transactions contemplated herein, (ii) has duly authorized and executed this Agreement, (iii) the person signing below has the requisite authority to bind the Party on whose behalf he or she is signing, and (iv) assuming due authorization and execution by the other Party hereto, this Agreement is a legal, valid and binding obligation of the Party executing this Agreement, enforceable in accordance with its terms. CLC shall deliver to the City a legal opinion of Preston Gates & Ellis LLP, reasonably acceptable to the City, concerning the application of certain Washington laws to CLC's activities under this Agreement, which opinion shall be dated as of the Effective Date of this Agreement.

Section 9. Contractual Relationship

The relationship of CLC to the City under this Agreement shall be that of an independent contractor. This Agreement does not authorize CLC to act as the agent or legal representative of the City for any purpose whatsoever. CLC is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever.

Section 10. General Provisions

A. Notices. All notices, approvals, and invoices required in connection with this Agreement shall be in writing and deemed to have been duly given if personally delivered or sent by fax, e-mail, United States mail or overnight delivery service, or as otherwise specified in this Agreement, each with proof of receipt, to the respective representatives of the Parties or their designees, as shown below, or as otherwise indicated in written notice from one Party to the other.

City

CLC

HCP Program Manager

Chip Nevins,
King County Senior Conservation Director

Seattle Public Utilities
700 Fifth Ave., Suite 4900
P.O. Box 34018
Seattle, Washington 98124-4018
Phone: 206-386-1990
Fax: 206-684-0206
E-mail: cyndy.holtz@seattle.gov

Cascade Land Conservancy
615 Second Avenue, Suite 625
Seattle, WA 98104
Phone: (206) 292-5907, Ext. 109
Fax: (206) 292-4765
E-mail: chipn@cascadeland.org

B. Publicity. The Parties shall make good faith efforts to coordinate any public relations or publicity efforts undertaken by either Party regarding the cooperative Program outlined in this Agreement. Notwithstanding the foregoing, until the end of the acquisition phase of the Program, CLC shall not publicize the property acquisition program hereunder without the prior written approval of the City.

C. Applicable Law. This Agreement shall be governed by the laws of the State of Washington. Each Party shall cause all work for which it is responsible under this Agreement to be carried out in accordance with all applicable laws and regulations, including without limitation public works laws and laws prohibiting discrimination based on sex, sexual orientation, race, color, national origin, ancestry, creed, religion, political ideology, age, marital status, or the presence of any sensory, mental or physical handicap. Failure to comply with the foregoing shall be a material breach of this Agreement.

D. Entire Agreement; Modification. This Agreement (including recitals, Schedules and Exhibits) is the complete expression of the terms herein, and any oral representations or understandings not incorporated herein are excluded. This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties relating to the Program and constitutes the entire Agreement between the Parties. This Agreement may be modified or amended only by the written agreement of the Parties.

E. Severability. If any provision hereof is held by a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

F. No Waiver. No waiver by either Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provision of this Agreement. No waiver shall be effective unless made in writing.

G. No Third Party Beneficiaries. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not

a Party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

H. Interpretation. All recitals, Schedules and Exhibits hereto are, by this reference, incorporated into this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Agreement. In the event of a conflict between this Agreement and the City Conservation Easement or City Stewardship Assignment, the City Conservation Easement or City Stewardship Assignment, as applicable, shall control. Each Party and its counsel has reviewed and revised this Agreement and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

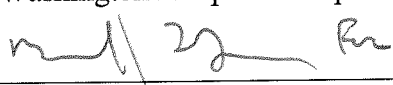
I. Time is of the Essence. For the purposes of this Agreement and each Party's obligations hereunder, time is of the essence.

J. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors or assigns of each Party. Neither Party may assign its rights or obligations in this Agreement without the prior written consent of the other Party, which consent may be withheld in that Party's sole discretion.

K. Counterparts. This Agreement may be executed in counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

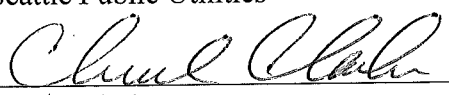
IN WITNESS WHEREOF, the authorized representatives of the parties hereto have signed their names in the spaces below.

CASCADE LAND CONSERVANCY
A Washington Nonprofit Corporation



Gene Duvernoy
President

THE CITY OF SEATTLE
Seattle Public Utilities



Chuck Clarke
Director

Schedule 1

EXAMPLES SHOWING INFLATION ADJUSTMENTS OF STEWARDSHIP COSTS

1. Property acquired in 2007: initial adjustment from 2005 to 2007 where all indices are known:

$$\frac{\text{Average of Monthly Jan-Dec CPI Indices for 2007}}{\text{Average of Monthly Jan-Dec CPI Indices for 2005}} = \frac{194}{189} = 1.03$$

Adjusting from 2007 to 2008:

$$\frac{\text{Average of Monthly Jan-Dec CPI Indices for 2008}}{\text{Average of Monthly Jan-Dec CPI Indices for 2007}} = \frac{196}{195} = 1.01$$

2. Property acquired in 2008: initial adjustment from 2005 to 2008 where 2008 indices are not known, so the rate of inflation from 2007 to 2008 is estimated by the inflation between 2006 and 2007:

$$\begin{array}{ccc} \frac{\text{Average of Monthly Jan-Dec CPI Indices for 2007}}{\text{Average of Monthly Jan-Dec CPI Indices for 2005}} & \times & \frac{\text{Average of Monthly Jan-Dec CPI Indices for 2007}}{\text{Average of Monthly Jan-Dec CPI Indices for 2006}} \\ \\ \frac{194}{189} & \times & \frac{194}{192} = 1.04 \end{array}$$

EXHIBIT A TO AGREEMENT FOR ACQUISITION AND MANAGEMENT OF FISH HABITAT

POTENTIAL PROPERTY ACQUISITIONS

Parcel	Number	Acres	Assessed Valuation	Priority
Dorre Don Meanders - Priority Site No. 1				
152206	-9102	5.45	\$349,800	2
	-9101	1.90	\$397,320	2
	-9105	5.60	\$191,400	2
	-9025	3.93	\$311,520	1
	-9026	6.43	\$135,960	1
	-9061	0.70	\$47,520	2
	-9007	1.30	\$398,640	3
	-9038	0.35	\$73,920	3
092206	-9028	0.91	\$224,400	3
	-9179	5.28	\$917,400	3
	-9029	6.49	\$195,360	3
162206	-9030	12.00	\$624,360	3
	-9002	6.92	\$518,760	3
	-9071	14.16	\$73,888	3
	Total	71.42	\$4,460,248	
Mouth of Taylor - Priority Site No. 2				
511140	-0150	5.13	\$280,500	1
	-01XX	5.00	\$228,000	1
	-0140	2.07	\$143,750	5
	-0145	1.46	\$240,350	5
	-0146	0.37	\$232,300	5
511240	-0095	4.00	\$90,200	4
	-0085	3.33	\$209,880	4
042206	-9027	3.14	\$219,120	6
	-9030	0.55	\$34,320	6
	-9018	2.64	\$392,040	6
	-9020	2.65	\$68,792	6
	-9021	1.84	\$190,080	6
	-0066	3.14	\$204,700	5
	Total	35.32	\$2,534,032	
Ricardi - Priority Site No. 3				
242305	-9081	13.00	\$147,840	1
	-9029	0.23	\$1,320	1
292306	-9016	0.61	\$204,600	2
	-9035	8.33	\$207,240	2
	-9007	8.21	\$341,880	2
	-9006	12.94	\$96,360	2
	-9081	20.00	\$168,000	2
	-9051	0.46	\$6,000	1
	Total	63.78	\$1,173,240	
Belmondo - Priority Site No. 4				
292306	-9013	5.88	\$303,600	1
	-9019	78.51	\$723,360	1
	-9071	1.10	\$55,440	2
	-9009	36.74	\$129,360	1
	-9008	5.67	\$120,120	1
	-9035	8.33	\$207,240	3
	-9007	8.21	\$341,880	3
	-9006	12.94	\$96,360	3

322306	-9081	20.00	\$168,000	3
	-9005	1.12	\$83,950	2
	-9093	0.41	\$181,700	2
	-9096	0.46	\$33,350	2
	-9042	20.42	\$2,415,000	2
712040	-9071	4.33	\$105,800	2
	-9091	4.91	\$93,150	2
	-0005	0.43	\$161,000	2
	-0010	0.50	\$49,450	2
	-0015	0.64	\$111,550	2
	-0020	0.81	\$113,850	2
	-0030	0.91	\$111,550	2
	-0035	1.58	\$371,450	2
	-0050	0.54	\$181,700	2
	-0055	0.57	\$203,550	2
Total		215.01	\$6,362,410	

Landsburg - Priority Site No. 5

242206	-9047	26.00	\$378,000	1
	-9052	4.10	\$67,320	2
	-9065	3.21	\$269,280	2
	-9062	4.72	\$151,800	3
	-9110	12.44	\$286,440	3
	-9017	10.60	\$273,240	3
	-9050	2.87	\$36,960	3
	-9012	1.89	\$7,320	4
	-9107	1.15	\$24,000	4
	-9116	0.44	\$24,000	4
	-9121	4.92	\$6,600	4
	-9023	2.04	\$24,000	4
	-9026	6.27	\$520,080	4
	-9080	1.93	\$258,720	4
	-9063	1.52	\$291,720	4
146740	-9064	2.89	\$234,960	4
	-0160	0.48	\$211,200	4
	Total	87.47	\$3,065,640	

Jones - Priority Site No. 6

357020	-0040	3.51	\$139,920	1
	-0042	2.95	\$71,500	1
	-0005	0.16	\$39,600	2
	-0006	0.76	\$500,400	2
	-0010	1.86	\$353,760	2
192306	-0055	4.11	\$429,000	2
	-9053	5.00	\$215,160	2
	-9034	5.03	\$483,120	2
	-9041	0.38	\$348,480	2
	-0010	1.86	\$353,760	2
	-0006	0.76	\$39,600	2
	-9080	11.90	\$117,000	2
	-9009	35.67	\$445,000	2
202306	-9023	0.90	\$179,520	2
	-9045	5.66	\$297,000	2
	-9042	6.27	\$549,120	2
	-9064	2.31	\$138,600	2
	-9063	3.50	\$174,200	2
	-9010	2.16	\$267,000	2
	-9065	2.16	\$442,200	2
	-9042	11.93	\$561,000	2
Total		74.85	\$4,561,940	

Lower Lions - Priority Site No. 7

322306	-9056	13.45	\$227,040	1
	-9084	1.70	\$43,560	1
	-9085	1.14	\$19,800	1
	-9022	2.94	\$51,480	2

-9132	0.70	\$25,080	2
-9131	1.32	\$104,280	3
-9074	4.64	\$44,880	3
-9011	5.00	\$154,440	3
-9028	2.30	\$69,960	3
-9017	3.22	\$201,960	3
Total	36.41	\$942,480	

Byers Bend - Priority Site No.8

042206	-9033	6.03	\$361,680	1
	-9025	7.47	\$603,240	1
	-9079	0.89	\$105,600	3
	-9043	0.76	\$105,600	3
	-9023	0.87	\$135,960	3
	-9045	0.84	\$283,800	3
	-9047	0.67	\$87,120	3
	-9066	0.70	\$236,280	3
	-9050	0.71	\$180,840	3
	-9053	0.70	\$278,520	3
	-9051	0.68	\$80,520	3
	-9100	0.13	\$6,600	3
332306	-9075	0.40	\$18,480	3
	-9013	1.56	\$18,480	3
	-9084	6.10	\$372,240	3
	-9068	17.46	\$415,800	2
	-9010	12.30	\$178,200	2
Total	28.51	\$2,874,960		

Royal Arch Bend - Priority Site No. 9

275220	-0045	18	\$300,000	3
	-0050	18.74	\$575,000	3
	-0075	10.8	\$500,000	3
	-0070	1.08	\$200,000	3
	-0063	0.27	\$200,000	3
	-0060	0.34	\$200,000	3
	-0062	0.53	\$225,000	3
	-0061	0.65	\$200,000	3
	Total	50.41	\$2,400,000	

Total Priority Parcels:	663.18	\$28,374,950
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**EXHIBIT B TO AGREEMENT FOR ACQUISITION AND MANAGEMENT
OF FISH HABITAT**

**FORM OF CONSERVATION-STEWARDSHIP EASEMENT
FROM CITY TO CLC**

When Recorded Mail To:

Cascade Land Conservancy
615 Second Avenue, Suite 625
Seattle, WA 98104
Attn: Chip Nevins

DEED OF CONSERVATION-STEWARDSHIP EASEMENT

Grantor [Seller]: _____.
Grantee [Buyer]: _____.
Legal Description (abbreviated): _____, Additional legal(s) on Page _____.
Assessor's Tax Parcel ID#: _____.
Reference Nos. of Documents Released or Assigned: _____.
Project [Area]: _____.
Parcel [#]: _____.

This Deed of Conservation-Stewardship Easement ("Easement") is granted this _____ day of _____, _____, by The City of Seattle, a municipal corporation of the State of Washington ("Grantor"), to Cascade Land Conservancy, a Washington nonprofit corporation ("Grantee").

WHEREAS, Grantor and Grantee make the following recitals:

A. As a party to the Cedar River Watershed Habitat Conservation Plan dated April 21, 2000, as may be amended or supplemented from time to time ("HCP"), Grantor made a commitment to spend specified amounts of money to acquire, restore, enhance and/or protect high quality spawning, rearing or refuge habitat for anadromous fish species, and the natural features and processes sustaining such habitat, along the mainstem of the lower Cedar River below Landsburg Dam ("Fish Habitat") for the term of the HCP.

B. To implement its obligations under the HCP, Grantor has entered into that certain Agreement for Acquisition and Management of Fish Habitat dated as of _____, 200__ (the "Agreement") with Grantee.

C. In accordance with the Agreement and with the assistance of Grantee, Grantor has acquired an approximately ___ acre parcel of land in King County, Washington, as legally described in Appendix A (the "Protected Property") and depicted in Appendix B, both attached hereto and incorporated herein, for the preservation, and possible restoration and/or enhancement, of Fish Habitat.

D. The nature of Fish Habitat on the Protected Property is documented in a present conditions report, prepared by Grantee, that provides an inventory of the relevant features, current uses and state of improvement of the Protected Property (the "Report"). Grantor has been or will be provided a copy of the Report.

E. In accordance with the Agreement, Grantee is obligated to manage the Protected Property until [the expiration of the HCP on December 31, 2050] [any termination or release as provided for in section 8 or extinguishment as provided for in section 12] to (i) preserve Fish Habitat and (ii) restore or enhance Fish Habitat (as set forth in this Easement and the Report, and as may be set forth in writing by Grantor in the future), and Grantor in facilitation thereof is granting to Grantee a [temporary] [perpetual] conservation-stewardship easement in the Protected Property (as hereinafter defined, the "Easement").

[F. To accomplish perpetual preservation in accordance with the Agreement, Grantee has paid to Grantee \$_____, the difference between the present value of the Protected Property subject to this perpetual conservation-stewardship easement and the present value of the Protected Property subject to a conservation-stewardship easement terminating on December 31, 2050 (the "CLC Portion").]

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein and in the Agreement, Grantor and Grantee agree as follows:

1. Grant of Easement

Grantor hereby grants, conveys and quit claims, and Grantee accepts, a nonexclusive [perpetual] conservation-stewardship easement (the "Easement") over, under and across the Protected Property on the terms and conditions set forth herein. [This Easement shall terminate on December 31, 2050, and such termination shall not require further action of Grantor or Grantee. However, at the request of Grantor, Grantee shall execute a release of easement that may be recorded.] Notwithstanding the foregoing, this Easement may be terminated or released sooner in accordance with section 8. The conveyance of this Easement is a conveyance of an interest in real property under the provisions of RCW 64.04.130, subject

only to the mutual covenants, terms, conditions and restrictions set forth in this Easement and to those encumbrances set forth in Appendix C hereto.

2. Purpose

The purpose of this Easement is to assure that, for the term of the HCP, the Protected Property will be retained in its natural condition to preserve Fish Habitat thereon and that any use of the Protected Property that will interfere with the Fish Habitat thereon will be prevented (the "Purpose"). The Purpose includes restoration or enhancement of Fish Habitat on the Protected Property, should Grantor determine in the future that such restoration or enhancement is warranted.

Grantor and Grantee intend that this Easement prohibit any use of the Protected Property that is inconsistent with the Purpose. [Grantee acknowledges that the Protected Property contains _____ *(describe use and/or improvement)* and that maintenance of such _____ is consistent with the Purpose of this Easement.] *or, if the property contains improvements that need to be removed:* [Grantee acknowledges that the Protected Property contains _____ *(describe use and/or improvement)* as of the date of this Easement and that such use and/or improvement is inconsistent with the Purpose of this Easement] *or, if the property is bare land:* [The parties agree that the current use of, and improvements to, the Protected Property are consistent with the Purpose of this Easement.]

3. Prohibited Uses

Any activity or use on, above, through, or below the Protected Property that is inconsistent with the Purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, except to the extent such activities or uses are otherwise permitted under Section 4 of this Easement:

A. Subdivision. Legal or "de facto" subdivision of any portion of the Protected Property in any manner.

B. Improvements to the Protected Property. Constructing, installing or preparing the land for any buildings, structures or other improvements of any kind, including without limitation, sheds, parking areas, recreational amenities, roads, trails, access routes, overhead or underground utilities. Impermanent structures (such as, without limitation) mobile homes, campers, other live-in vehicles, boats on trailers, horse trailers or other trailers are also prohibited. No portion of the Protected Property shall be paved or otherwise be covered with concrete, asphalt, gravel, crushed rock, wood shavings or any other paving or surfacing material.

C. Fish Habitat. Any activity that changes, disturbs or alters the Fish Habitat on the Protected Property. Further prohibited activities include, but are not limited to the clearing, draining, filling, dredging, piping, ditching, or diking of Fish Habitat, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses.

4. Reserved Rights of Grantor

Grantor reserves to itself, and to its successors and assigns, any use of, or activity on, the Protected Property that is consistent with the Purpose of the Easement and that is not expressly prohibited herein. Without limiting the generality of the foregoing, Grantor specifically reserves the following uses and activities:

A. Authorized Activity. The right to *(If applicable, insert description of any activity expressly authorized in the second paragraph of Section 2)*.

B. Public Access. The right to allow pedestrian public access, provided that such public access does not interfere with Fish Habitat, is not for the purpose of carrying out any of the prohibited uses set forth in Section 3 hereof, and is otherwise consistent with the Purpose and terms of this Easement.

C. Maintenance of Property and Conservation Values. Notwithstanding the provisions of Section 3, and provided that the following actions on or uses of the Protected Property do not interfere with Fish Habitat, Grantor may:

1. Control or remove for ecological purposes non-native or invasive plant and animal species using, if necessary, insecticides, herbicides or other biocides.
2. Alter existing topography or hydrology in order to protect, maintain, enhance or restore Fish Habitat or make any improvements to the Protected Property directly related to maintaining or restoring Fish Habitat; provided, that prior to applying for governmental permits for each such project, Grantor has consulted with Grantee.
3. Alter existing vegetation in order to protect, maintain, enhance or restore Fish Habitat.
4. Remove or trim hazardous trees that present a clear and imminent danger to public health or safety.

5. Install or maintain gates, barriers, and directional or interpretive signage to allow the public access permitted by this Easement.

6. Maintain, reconstruct, relocate or eliminate existing footpaths to allow public access as permitted by Section 4.B of this Easement.

7. Install, maintain, construct and use with motorized vehicles temporary access routes necessary to accomplish the activities allowed by this Section 4; provided that this Section shall not be interpreted or construed to permit public access by motorized vehicles. Such access routes shall be the minimum width and length necessary to accommodate vehicles and materials. Where reasonably feasible, use of hand-operated equipment and foot access shall be utilized. Any such access route shall be sited to avoid or minimize interference with Fish Habitat, and shall be removed with the area restored to its prior natural condition upon project completion.

The provisos in this Section 4.C that prohibit uses or activities in this Easement that "interfere with Fish Habitat" are not intended to prohibit uses or activities that have a de minimis impact on Fish Habitat on the Protected Property.

D. Protection of Health and Safety. The right to undertake other activities necessary to protect public health or safety, including the use of motorized vehicles in emergency situations, or which are actively required by and subject to compulsion of any government agency with authority to require such activity; provided, that Grantor shall make diligent efforts to avoid or minimize interference with Fish Habitat and, to the extent reasonably feasible, the area shall be restored to its prior natural condition upon project completion.

E. Development Rights. The right to use any development rights that are now or hereafter allocated to, implied, reserved or inherent in the Protected Property for the purpose of calculating permissible lot yield or density, or to meet setback, density or open space requirements for development, of any property other than the Protected Property.

5. Responsibilities of Grantor

A. Annual Payment. Until January 1, 2051, the Grantor shall pay Grantee \$3,000 per year (in 2005 dollars) (the "Annual Payment") for its maintenance and stewardship responsibilities with respect to the Protected Property, as those responsibilities are set forth in Section 6 hereof. Of the Annual Payment, \$2,250 shall be used by Grantee for Monitoring and General Maintenance of the Protected Property (as described in sections 6.A.1 and 6.A.2) and \$750 shall be used for the General Stewardship, as described in Section 6.A.3, of all properties on which Grantee has obtained conservation-stewardship easements or stewardship

assignments under the Agreement (the "Protected Properties"). In the event that Grantee is able to provide Monitoring and General Maintenance of the Protected Property for less than \$2,250 in a given year, Grantee shall increase the work to be performed and Grantee's expenditure for General Stewardship of the Protected Properties in the amount equaling the under-expenditure for Monitoring and General Maintenance of the Protected Property. In the event that the Monitoring and General Maintenance required under Section 6 for the Protected Property in a given year costs more than \$2,250, Grantee shall be responsible for such additional costs. Notwithstanding the foregoing, in the event that unforeseeable circumstances occur Grantee may request modification of its responsibilities under Section 6 and/or an increased Annual Payment, and Grantor, at its sole discretion, will determine whether to grant such request.

The Annual Payment shall be prorated for a portion of a year and adjusted for inflation by use of the Consumer Price Index or, when such index is unavailable, by use of recent Consumer Price Indices. Examples of inflation adjustments are shown in **Schedule 1** hereto. Between December 1 and December 31 of each year through 2050, Grantee shall send Grantor an invoice for the Annual Payment, documenting to Grantor's reasonable satisfaction the Monitoring and General Maintenance performed on the Protected Property and the General Stewardship performed on the Protected Properties during that calendar year. Grantor shall pay such invoice within 30 days of receipt.

B. End of Annual Payment. Beginning on January 1, 2051 and continuing thereafter, Grantor no longer shall pay for maintenance and stewardship, but Grantee shall continue to provide all such services to the Protected Property in accordance with section 6 hereof for so long as the City of Seattle owns the Protected Property. Notwithstanding the preceding sentence, on and after January 1, 2051, Grantee in its sole discretion may, upon thirty (30) days prior written notice to Grantor, terminate its obligations in accordance with section 8.B. Other than as specified herein, this Easement is not intended to in any way affect any obligation of the Grantor as owner of the Protected Property, including, without limitation, the payment of all taxes and assessments and compliance with applicable laws.

6. Rights and Responsibilities of Grantee

To accomplish the Purpose of this Easement, Grantee shall have:

A. The responsibility for the general upkeep and maintenance of the Protected Property, consistent with the uses and activities reserved to Grantor under Sections 4.C and D of this Easement. General upkeep and maintenance entails the following:

1. Monitoring: Conducting regular monitoring of the Protected Property depending on activity level (minimum of one visit per calendar quarter) to check for dumping and other illegal activity, to evaluate compliance with terms of the Easement and to implement the general maintenance and ecological stewardship tasks described below.

2. General Maintenance:

a) Maintaining appropriate perimeter postings, such as those relating to trespassing, hunting and public access generally;

b) Maintaining any fences, gates or barriers intended to keep motorized vehicles off the Protected Property in a condition substantially similar to their condition as of the date of this Easement;

c) Removing garbage, closing trails, revegetating informal trails or otherwise taking reasonable measures to protect Fish Habitat in response to unauthorized uses of the Protected Property by third parties other than Grantor; and

d) Advising Grantor of any known conditions (e.g., hazardous trees, illegal activity or trespass, vandalism) that present a clear and imminent danger to public health or safety.

3. General Stewardship:

a) Routine ecological stewardship : Providing stewardship services to retain and improve levels of biodiversity on the Protected Property. Grantee will conduct at least three (3) stewardship events per year on the Protected Property; provided, however, that this affirmative obligation on the Protected Property shall be deemed to be met by Grantee if Grantee has otherwise provided for the year in question at least three (3) stewardship events on each of seven (7) other Protected Properties. Each stewardship event involving volunteers shall use a minimum of fifteen (15) Conservation Corps or volunteer workers for a minimum of six (6) hours (not including transportation time). Each stewardship event using solely Conservation Corps workers shall use a minimum of six (6) workers for a minimum of six (6) hours (not including transportation time). Grantee, in consultation with Grantor, will determine whether to use volunteer or skilled labor or some combination of the two, based upon the appropriate skill level required, safety considerations, technical skill requirements, and efficacy in carrying out the required work tasks. Stewardship events for invasive weed removal shall occur during the months of February , July and September of the same year, unless otherwise agreed to in writing. Typical routine maintenance activities include:

i) Controlling noxious weeds, invasive species and pests as required by applicable law; and

ii) Planting of native vegetation.

b) Capital Projects: Grantee will provide fund development and project planning for capital projects on the Protected Property. Grantee will oversee implementation of any funded projects; staff time to be paid through grants. Grantee will have primary responsibility of prioritizing and identifying the project site and activities (with guidance from and upon mutual agreement with Grantor), developing matching funds, and overseeing implementation. Capital projects shall be approved by Grantor in writing prior to implementation. Typical capital projects include:

i. Erosion control;

ii. Bank stabilization using live-stake techniques; and/or

iii. Installation of large woody debris.

c) Grantor and Grantee shall meet at least annually prior to the growing season to plan for Grantee activities including General Stewardship activities on the Protected Property and the other Protected Properties. Grantor and Grantee shall endeavor to be as efficient as possible in allocating the General Stewardship portion of the Annual Payment among the above-described General Stewardship activities and across all Protected Properties. The parties recognize that the stewardship needs of the Protected Properties may be unequal and, therefore, the expenditure of money for such activities on the Protected Property in a given year may be zero or less than the amount spent on other Protected Properties. If Grantor and Grantee disagree on the aforesaid plan, Grantor's plan shall be adopted; provided, that Grantee shall be under no obligation to expend more effort on General Stewardship activities on the Protected Property and all other Protected Properties in a given year than the General Stewardship portion of the anticipated Annual Payments. Grantee shall inform Grantor of each of the General Stewardship events and activities scheduled on the Protected Property at least two weeks prior to its occurrence.

4. Specific Stewardship Actions: Implementing those stewardship elements (which may include demolition and removal of improvements existing as of the date of this Easement) specifically called out in the Report and agreed to by Grantor; provided, that Grantee shall have no right to any payment from Grantor for such actions without the prior written approval of Grantor, nor shall any portion of the Annual Payment be spent on Specific Stewardship Actions.

B. The right to enter upon the Protected Property at reasonable times in order to undertake Grantee's management responsibilities and to monitor Grantor's compliance with and otherwise enforce the terms of this Easement in accordance with Section 7, all in a

manner that does not unreasonably interfere with Grantor's quiet use and enjoyment of the Property;

C. In the event that the Fish Habitat is impaired by an Act of God, the right to restore all or portions of the Protected Property in ways not inconsistent with the Purpose of the Easement and upon mutual agreement with Grantor;

D. The right to prevent any activity on or use of the Protected Property that is inconsistent with the Purpose of this Easement and to require Grantor's restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, pursuant to Section 7; and

E. The right to undertake such restoration and enhancement of the Protected Property as provided for in a restoration agreement mutually agreed upon by Grantor and Grantee.

F. No later than December 31 of each year for so long as Grantee has management and stewardship responsibilities under this Easement with respect to the Protected Property, the responsibility to provide Grantor with a report that summarizes such Grantee activities during the previous year. The report shall indicate the nature of habitat improvements, structures, trails or other unauthorized man-made improvements, or potential threats to Fish Habitat, actions taken to preserve Fish Habitat, other general maintenance or general stewardship activities (including fund development for capital projects) required by or otherwise consistent with this Easement, and other relevant information that may be requested by Grantor.

In fulfilling its responsibilities hereunder, Grantee shall not be deemed to be an employee of Grantee, nor shall Grantee be authorized to act as the agent or legal representative of the City for any purpose whatsoever. Grantee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of Grantor or to bind Grantor in any manner or thing whatsoever. Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee.

7. Enforcement

A. Grantee. Grantee shall have the right to prevent and correct violations of the terms of this Easement, as follows: With reasonable advance notice to Grantor, Grantee may enter the Protected Property for the purpose of inspecting for violations. If Grantee finds what it believes is a violation, Grantee, before proceeding to informal dispute resolution as described in Section 7.C, shall give Grantor written notice of the violation and thirty (30) days to correct it, or, under circumstances where the violation cannot reasonably be cured within such thirty (30) day period, such longer time as is reasonably necessary, provided that Grantor

has begun curing the violation within such thirty (30) day period and is proceeding diligently to cure the violation. Notwithstanding the foregoing, there shall not be a cure period when an ongoing or imminent violation could significantly diminish or impair the Fish Habitat on the Protected Property.

B. Grantor. Grantor shall have the right to compel Grantee's performance of its responsibilities under the terms of this Easement, or to terminate this Easement in the event of continued nonperformance by Grantee, as follows: If Grantor determines that Grantee is not diligently performing its responsibilities under this Easement or is otherwise in violation of the terms of this Easement, Grantor, before proceeding to informal dispute resolution as described in Section 7.C, shall give Grantee written notice of the nonperformance or violation and thirty (30) days to correct it, or, under circumstances where the nonperformance or violation cannot reasonably be cured within such thirty (30) day period, such longer time as is reasonably necessary, provided that Grantee has begun curing the nonperformance or violation within such thirty (30) day period and is proceeding diligently to cure the nonperformance or violation. Notwithstanding the foregoing, there shall not be a cure period when an ongoing or imminent violation could significantly diminish or impair the Fish Habitat on the Protected Property.

Grantor shall also have the right to the timely and reasonable consent of the Grantee when appropriate under this Easement. If Grantor believes that consent has not been given reasonably, Grantor shall (except in a situation that could irreversibly diminish or impair the Fish Habitat on the Protected Property) give Grantee written notice and thirty (30) days for consent before proceeding to informal dispute resolution as described in Section 7.C. Upon the failure of informal dispute resolution, Grantor may seek an injunction or any other process to mandate Grantee's consent. If, after all appeals have been exhausted or appeals periods have run, a court of competent jurisdiction finds that consent was unreasonably withheld, consent shall be deemed to be given.

C. Informal Dispute Resolution. If the cure period described in Section 7.A or 7.B, as applicable, has run and a cure not effectuated, or if there is no cure period, Grantor's HCP Program Manager and Grantee's King County Senior Conservation Director shall negotiate in good faith and use their best efforts to resolve the dispute. If Grantor and Grantee cannot resolve the dispute, it shall be referred to Grantor's Resource Planning Branch Executive, Seattle Public Utilities, and Grantee's President, or their successors. Only upon failure to resolve the dispute through the foregoing process may Grantor or Grantee pursue the remedies set forth in Sections 7.D or 8. Notwithstanding the foregoing, in a situation that could significantly diminish or impair the Fish Habitat on the Protected Property, either Party may proceed immediately to the remedies set forth in Sections 7.D or 8.

D. Remedies. Either Party may bring an action at law or in equity to enforce the terms of this Easement, by seeking to enjoin the violation temporarily or permanently, to require restoration of the Protected Property to its condition prior to the injury and/or to recover any damages to which that Party may be entitled, as applicable. In addition, in the event that Grantee's nonperformance of its responsibilities under, or violation of, the terms of this Easement is not resolved through informal dispute resolution, Grantor may, in its sole discretion, terminate this Easement. Upon Grantor's request, Grantee shall execute a document evidencing such termination and Grantor may record it. The failure of either Party to discover a violation or to take immediate legal action shall not bar it from doing so at a later time, provided that each Party must act with reasonable promptness upon discovery to correct any claimed violation. Nothing herein shall limit the Parties' other remedies.

8. Termination and Release

A. Automatic Termination. Notwithstanding any provision of this Easement to the contrary, if at any time (1) Grantee, at its sole discretion, determines that it has become impractical for Grantee to undertake its rights and/or responsibilities under this Easement and Grantee has given at least thirty (30) days prior written notice to Grantor, (2) Grantee ceases to exist or to be authorized to acquire and hold conservation easements under RCW 64.04.130 and 84.34.210 (or any successor provision(s) then applicable), (3) bankruptcy or insolvency proceedings are commenced against Grantee, (4) the Agreement has been terminated for any reason by Grantee, in accordance with its terms, or (5) the procedures described in Section 7 have been followed, and Grantor and Grantee have been unable to resolve a dispute about Grantee's fulfillment of its obligations under this Easement, then this Easement and Grantee's rights and responsibilities hereunder shall terminate automatically upon Grantor's notice of same to Grantee. Upon request, Grantee shall execute such documents as Grantor reasonably requests to evidence such termination.

B. Optional Termination. If Grantor terminates the Agreement, Grantor may leave this Easement in effect or, in Grantor's sole discretion, require its termination. [Termination shall be effective upon notice from the City.] [Termination shall be effective upon the City's reimbursement of the CLC Portion with interest at the rate of 4.5% per annum.] In addition, on and after January 1, 2051, Grantee in its sole discretion may release this Easement by giving thirty (30) days prior written notice of same to Grantor. In such event, the Parties shall execute and record a release of this Easement.

9. Transfer of Protected Property

Any time that this Easement, the Protected Property itself, or any interest in it is to be transferred by Grantee or Grantor to a third party, the transferring Party, its successors and

assigns, shall give written notice to the other Party at least thirty (30) days prior to transfer, such notice containing the name, address and telephone number of the prospective transferee or its representative, and, in the case of Grantee, shall obtain prior written approval from Grantor for the assignment, which approval may be granted or denied in Grantor's sole discretion. In addition, the executory contract for the transfer of any interest in all or a portion of the Protected Property shall describe this Easement, and the document by which Grantor divests itself of such interest shall incorporate the terms of this Easement directly or by reference.

10. Estoppel Certificates

Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies, to the knowledge of Grantee whether or not Grantor is in compliance with all obligations of Grantor contained in this Easement, provided that any such document shall be in form and substance satisfactory to Grantee. Such certification shall be limited to the condition of the Protected Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within sixty (60) days of receipt of Grantor's written request therefor.

11. Liability and Indemnification

A. Grantor assumes no responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of Grantee, its employees, contractors or others by reason of this Easement. Grantee shall protect, defend, indemnify and save harmless Grantor, its officers, agents and employees from any and all claims, cost and liabilities whatsoever occurring or resulting from: (a) Grantee's failure to pay any compensation, fees, wages, benefits or taxes; and (ii) the supplying to Grantee or Grantor of work, services, materials or supplies by Grantee's employees or agents or other contractors or suppliers in connection with or in support of performance of Grantee's obligations under this Easement.

B. Grantee shall protect, defend, indemnify and save harmless Grantor and its officers, employees, agents and contractors, and their successors and assigns (collectively, the "Indemnified Parties") from and against any and all liabilities, penalties, losses, costs, damages, claims, causes of action, demands or judgments, or awards of damages, including reasonable attorneys' fees, arising out of or in any way connected with a breach of this Easement by Grantee, its officers, agents or employees, negligent action or inaction of Grantee, its officers, agents or employees in the acquisition or stewardship of Priority Properties, or their failure to comply with all applicable laws. For purpose of this Easement only, Grantee waives the immunity granted it for industrial insurance claims pursuant to

Revised Code of Washington Chapter 51 to the extent necessary to extend its obligations under this section to any claim, demand, or cause of action brought by or on behalf of any employee of Grantee, including judgments, awards and costs arising therefrom and including attorney's fees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

12. Extinguishment and Eminent Domain

A. Extinguishment. If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by joint agreement of the Parties or by judicial proceedings in a court having jurisdiction. Grantee shall have no compensable interest in the Easement under such circumstances. The immediately foregoing provision shall be limited solely to the circumstances in this Section 11.A, and shall not be interpreted to have any application or inference to any other provision of, or circumstance under, this Easement, including, but not limited to, those provisions pertaining to enforcement of the terms of this Easement.

B. Condemnation. If all or any of the Protected Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interest in the Protected Property subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Upon payment of any expenses reasonably incurred by Grantee, Grantee shall not be entitled to compensation and the entirety of any compensation award shall belong to Grantor. The immediately foregoing provision shall be limited solely to the circumstances described in this Section 11.B, and shall not be interpreted to have any application or inference to any other provision of, or circumstance under, this Easement, including, but not limited to, those provisions pertaining to enforcements of the terms of this Easement.

13. Modification

This Easement may be modified by agreement of the parties provided that any such amendment shall be consistent with the Purpose of this Easement and shall not affect its duration. All modifications shall be in writing, signed by both parties and recorded in the real property records of King County.

14. Interpretation

This Easement shall be interpreted under the laws of Washington, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes. Grantor and Grantee and their counsel have reviewed this Easement and agree that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Easement. In the event of any conflict between the legal description in Appendix A and the map contained in Appendix B, the legal description shall control. All recitals and Appendices hereto are by this reference incorporated into this Easement. This Easement may be executed in counterparts, and all such counterparts shall be part of one document.

15. Duration; Successors

This Easement shall be a servitude running with the land [until December 31, 2050] [in perpetuity unless sooner terminated or released as provided for in section 8 or extinguished as provided for in section 12]. Every provision hereof that applies to Grantor or Grantee shall also apply to, be binding upon and inure to the benefit of Grantor and Grantee and their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

16. Notices

Any notices required by this Easement shall be in writing and shall be personally delivered or sent by first class mail to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address.

To Grantor: Seattle Public Utilities
700 5th Ave., Suite 4900
P.O. Box 30418
Seattle, WA 98124-4018
Attn: HCP Program Manager

To Grantee: Cascade Land Conservancy
615 2nd Ave., Suite 625
Seattle, WA 98104
Attn: Chip Nevins

17. Severability

If any provision of this Easement is found to be invalid, illegal or unenforceable, that finding shall not affect the validity, legality or enforceability of the remaining provisions.

In witness whereof, Grantor and Grantee, intending to legally bind themselves to the extent stated herein, have set their hands on the date first written above.

Grantor: The City of Seattle

Chuck Clarke, Director
Seattle Public Utilities

ACCEPTANCE

The Cascade Land Conservancy does hereby accept the above Grant Deed of Conservation-Stewardship Easement, and agrees, by accepting this Easement, to honor the intentions of Grantor as stated in this Easement and the Agreement, to perform and fulfill its responsibilities under the terms of this Easement and to preserve and protect Fish Habitat on the Protected Property during the duration of this Easement.

Dated: _____

GRANTEE:
Cascade Land Conservancy

By: _____
Title: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 200_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of Seattle Public Utilities of The City of Seattle, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

Given under my hand and official seal hereto affixed the day and year in this certificate first above written.

(Signature of Notary)

(Print or stamp name of Notary)

Notary public in and for the State
of Washington, residing at _____
My appointment expires:

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 200_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of Cascade Land Conservancy, the _____ that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

Given under my hand and official seal hereto affixed the day and year in this certificate first above written.

(Signature of Notary)

(Print or stamp name of Notary)

Notary public in and for the State
of Washington, residing at _____
My appointment expires: _____

Appendix A

LEGAL DESCRIPTION OF PROTECTED PROPERTY

Appendix B

MAP OF PROTECTED PROPERTY

Appendix C

ENCUMBRANCES ON PROTECTED PROPERTY

Schedule 1

EXAMPLES SHOWING INFLATION ADJUSTMENTS OF STEWARDSHIP COSTS

1. Property acquired in 2007: initial adjustment from 2005 to 2007 where all indices are known:

$$\frac{\text{Average of Monthly Jan-Dec CPI Indices for 2007}}{\text{Average of Monthly Jan-Dec CPI Indices for 2005}} = \frac{194}{189} = 1.03$$

Adjusting from 2007 to 2008:

$$\frac{\text{Average of Monthly Jan-Dec CPI Indices for 2008}}{\text{Average of Monthly Jan-Dec CPI Indices for 2007}} = \frac{196}{195} = 1.01$$

2. Property acquired in 2008: initial adjustment from 2005 to 2008 where 2008 indices are not known, so the rate of inflation from 2007 to 2008 is estimated by the inflation between 2006 and 2007:

$$\begin{array}{ccc} \frac{\text{Average of Monthly Jan-Dec CPI Indices for 2007}}{\text{Average of Monthly Jan-Dec CPI Indices for 2005}} & \times & \frac{\text{Average of Monthly Jan-Dec CPI Indices for 2007}}{\text{Average of Monthly Jan-Dec CPI Indices for 2006}} \\ \\ \frac{194}{189} & \times & \frac{194}{192} = 1.04 \end{array}$$

**EXHIBIT C TO AGREEMENT FOR ACQUISITION AND MANAGEMENT
OF FISH HABITAT**

**FORM OF CONSERVATION EASEMENT
FROM LANDOWNER TO CITY
(WITH STEWARDSHIP ASSIGNMENT)**

When Recorded Mail To:

The City of Seattle
SPU Real Property Services
P.O. Box 34018
Seattle, WA 98124-4018

DEED OF CONSERVATION EASEMENT

Grantor: [Seller]

Grantee: The City of Seattle

Legal Description (abbreviated):

Additional legal(s) on Page: Appendix A

Assessor's Tax Parcel ID#:

GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT (the "Easement") is granted this ____ day of _____, 200_, by _____, _____ ("Grantor") to The City of Seattle, a municipal corporation of the State of Washington ("Grantee").

I. RECITALS

WHEREAS, Grantor and Grantee make the following recitals:

A. Grantor is the sole owner in fee simple of that certain real property located at _____ in King County, Washington, which is legally described in Appendix A hereto (the "Property").

B. [The Property includes a residential area as of the date of grant of this Easement described as follows: _____ as generally shown on Appendix B hereto (the "Residential Zone"). Within the Residential Zone as of the date of grant of this Easement are _____. Grantee acknowledges that this listing of the improvements existing on the Property as of the date of grant of this Easement is intended for reference purposes only and does not limit in any way additions or alterations to these improvements allowable under this Easement.]

C. [The remaining] approximately ____ acres of the Property, shown on Appendix B as the "Fish Habitat Zone," is a natural area containing high quality spawning, rearing or refuge habitat for anadromous fish species, and the natural features and processes sustaining such habitat ("Fish Habitat").

D. Specific features of the Fish Habitat Zone are documented in an inventory to be maintained on file at the offices of Grantee and incorporated into this Easement by this reference ("Present Conditions Report"). The Present Conditions Report, consisting of reports, maps, photographs, and other documentation, provides an accurate representation of the Property and Fish Habitat Zone at the date of grant of this Easement and is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement. As shown in Appendix E hereto, the Present Conditions Report has been reviewed and accepted by both Grantor and Grantee.

E. Grantor, as owner of the Property, has the right to identify, protect, and preserve the Fish Habitat Zone in perpetuity, and desires to transfer such rights to Grantee in perpetuity.

F. In fulfillment of certain of its obligations under the Cedar River Watershed Habitat Conservation Plan dated April 21, 2000 ("HCP"), as may be amended from time to time, Grantee desires to acquire a conservation easement in the Fish Habitat Zone.

II. GRANT

A. For the reasons stated above, and in consideration of \$10.00 and other good and valuable consideration in hand paid, Grantor hereby grants, conveys and warrants to Grantee, and Grantee accepts, as permitted by Revised Code of Washington ("RCW") 64.04.130 and Ch. 84.34 RCW, a conservation easement (the "Easement") in perpetuity over the Property, subject only to the mutual covenants, terms, conditions and restrictions set forth in this Easement and to those encumbrances set forth in Appendix C hereto ("Permitted Title Exceptions").

B. This Easement is an interest in real property under the provisions of RCW 64.04.130.

C. Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns.

III. PURPOSE

The purpose of this Easement is to implement the mutual intentions of Grantor and Grantee as expressed in the above Recitals and in the provisions that follow, to assure that the Fish Habitat Zone will be retained forever in its natural condition, and to prevent any use of, or activity on, the Property that will impair or interfere with the Fish Habitat therein (the "Purpose"). Grantor and Grantee intend that this Easement will confine the use of, or activity on, the Property to those uses and activities consistent with this Purpose.

IV. GRANTEE'S RIGHTS AND RESPONSIBILITIES

To accomplish the Purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

A. **Identification, Protection, Restoration and Enhancement.** The right to identify, preserve, restore, enhance and protect in perpetuity the Fish Habitat in the Fish Habitat Zone. Grantee may:

1. Control or remove for ecological purposes non-native or invasive plant and animal species in the Fish Habitat Zone using, if necessary, insecticides, herbicides or other biocides, provided such application is by the narrowest spectrum, least persistent material appropriate for the target species.

2. Alter existing topography or hydrology in the Fish Habitat Zone in order to protect, maintain, enhance or restore Fish Habitat or make any improvements to the Fish Habitat Zone directly related to maintaining or restoring Fish Habitat.

3. Alter existing vegetation on the Fish Habitat Zone in order to protect, maintain, enhance or restore Fish Habitat.

4. Install, maintain, construct and use with motorized vehicles temporary access routes across the Property and in the Fish Habitat Zone necessary to accomplish the activities allowed by this Section IV; provided that this Section shall not be interpreted or construed to permit public access by motorized vehicles. Such access routes shall be the minimum width and length necessary to accommodate vehicles and materials. Where reasonably feasible, use

of hand-operated equipment and foot access shall be utilized. Any such access route shall be sited to avoid or minimize interference with Fish Habitat, and shall be removed with the area restored to its prior natural condition upon project completion.

B. Access.

1. The right to enter the Fish Habitat Zone as Grantee deems necessary for the purpose of making a general inspection to assure compliance with this Easement. Grantee shall provide Grantor with prior written notice of the inspection and conduct the inspection at a mutually agreeable date and time. Grantee shall enter the Fish Habitat Zone along established driveways and/or pathways (including lawns) across the Property, or along such route as may subsequently be identified by the parties.

2. The right to enter the Fish Habitat Zone along established driveways and/or pathways (including lawns) across the Property, or along such route as may subsequently be identified by the parties, at such other times as are necessary to undertake restoration, enhancement and other land management activities on the Fish Habitat Zone. Grantee shall provide Grantor with prior written notice of the restoration, enhancement and/or land management activities and conduct such activities at mutually agreeable date(s) and time(s).

3. The right to enter the Fish Habitat Zone along established driveways and/or pathways (including lawns) across the Property, or along such route as may subsequently be identified by the parties, at such other times as are necessary to inspect after a storm or slide event or if there is reason to believe that a violation of the Easement is about to occur, is occurring, or has occurred, for the purpose of preventing, mitigating, or terminating the violation or otherwise enforcing the provisions of this Easement.

C. Observation and Study. The right to allow persons or small groups to enter the Fish Habitat Zone along established driveways and/or pathways (including lawns) across the Property, or along such route as may subsequently be identified by the parties, to observe and study the ecology of the Fish Habitat Zone; provided that any such persons or groups only accompany Grantee when it is otherwise inspecting the Property, agree to provide Grantor and Grantee with copies of any data or reports resulting from such research, and agree to abide by any other reasonable restrictions placed on access by Grantor and Grantee at the time arrangements are made to observe and study the ecology of the Fish Habitat Zone. All persons or groups given permission to enter the Fish Habitat Zone shall sign a waiver, substantially in the form attached to this Easement as Appendix D, releasing Grantor and Grantee from liability to the extent permitted by law.

D. Signs. The right to place a limited number of signs to inform the public about the Conservation Easement. Location of signs shall be by mutual agreement of the Parties.

E. **Enforcement, Injunction and Restoration.** The right to enforce the terms of this Easement, such as by enjoining any use of, or activity on, the Property that is inconsistent with the Purpose of this Easement or violates its terms, including trespass by members of the public, and undertaking or causing to be undertaken the restoration of such areas or features of the Fish Habitat Zone as may be damaged by uses or activities contrary to the provisions of this Easement, consistent with Section IX.

F. **Assignment.** The right to assign, convey, or otherwise transfer Grantee's interest in the Property, consistent with Section XIV.

G. **Development Rights.** The right to all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property (except development rights in the Residential Zone as provided for in this Easement). Grantor and Grantee agree that Grantor may not use such development rights or transfer such development rights to any portion of the Property as it now or hereafter may be bounded or described, or to any other property, or use such development rights for the purpose of calculating permissible lot yield or density of the Property or any other property.

V. GRANTOR'S RIGHTS AND RESPONSIBILITIES

A. **General.** Grantor has the right to engage in, or to permit or invite others to engage in any use of, or activity in, the Property that is not inconsistent with the Purpose of this Easement and that is not prohibited by this Easement. Without limiting the generality of the foregoing, Grantor specifically reserves for itself and its personal representatives, heirs, successor and assigns, the following uses and activities subject to applicable law:

B. **[Residential Zone.]** Grantor may carry out all legally permitted activities within the Residential Zone, and may use the Residential Zone for the construction, maintenance, repair, replacement or upgrade of [describe permitted primary and accessory structures], domestic water systems, water systems, utility systems, trails, fences and access driveways; provided, however, that Grantor may not carry out activities on the Property pertaining to mineral exploration, mining, forestry or subdivision that are specifically prohibited under Section VI.H and VI.A respectively or that unreasonably impair Grantee's access to the Fish Habitat Zone.]

C. **Fish Habitat Zone.**

1. **Protection of Public Health or Safety.** Grantor may undertake activities necessary to protect the public health or safety; provided that any such use or activity shall be conducted in compliance with applicable law and so that interference with Fish Habitat is avoided or, if avoidance is not possible, minimized to the extent possible. Subject to the foregoing, Grantor may prune or cut down timber, shrubs, grasses or other flora, or engage in other uses or activities necessary within the Fish Habitat Zone, as reasonably determined by

Grantor to protect public health or safety, to prevent erosion or slides, or as actively required by and subject to compulsion of any governmental agency with authority to require such use or activity shall be considered uses and activities consistent with the Purpose of this Easement. To ensure that interference with Fish Habitat is avoided or minimized, Grantor shall request approval from the Grantee prior to undertaking any use or activity under this Section V.C.1. Grantor's request shall include measures to restore the Fish Habitat Zone to a condition prior to such use or activity to the maximum extent possible.

2. Waste Removal. Grantor may remove any wastes, refuse, or other debris from the Fish Habitat Zone.

3. Footpath. Grantor may create a footpath in the Fish Habitat Zone; provided that such work is undertaken consistent with the Purpose of this Easement and pursuant to a construction plan prepared by Grantor and approved in advance by Grantee, that such footpath shall not be wider than two (2) feet, and that the removal of trees and shrubs in the creation of such footpath is avoided or, if avoidance is not possible, minimized to the extent possible.

4. Construction of fences and gates. Grantor may locate, construct and maintain fences and gates along the Property boundaries; provided that such work is undertaken consistent with the Purpose of this Easement and pursuant to a construction plan prepared by Grantor and approved in advance by Grantee. To the extent possible, such improvements shall complement and enhance the natural features of the Fish Habitat Zone.

5. Utilities. Grantor may locate, install and maintain a utility corridor within a right-of-way across the Fish Habitat Zone; provided that such work is undertaken consistent with the Purpose of this Easement and pursuant to a construction plan prepared by Grantor and approved in advance by Grantee, all such utilities are located underground, and impacts to Fish Habitat are avoided or minimized to the maximum extent practicable.

6. Recreational. Grantor may undertake passive recreational activities such as hiking and bird watching in the Fish Habitat Zone; provided that such activities are conducted in a manner and intensity that does not adversely impact the Fish Habitat of the Fish Habitat Zone.

D. Creation of Mortgage Liens. Grantor may create consensual liens, whether by mortgage, deed of trust, or otherwise, for the purpose of securing repayment of indebtedness; provided that such liens shall remain subordinate to this Easement.

VI. PROHIBITED USES AND ACTIVITIES

Any use of, or activity in, the Property inconsistent with the Purpose of this Easement is prohibited, and Grantor and Grantee acknowledge and agree that they will not conduct, engage in or permit any such use or activity. Without limiting the generality of this Section, the following uses of, or activities in, the Property, though not an exhaustive list, are inconsistent with the Purpose of this Easement and shall be prohibited; except as expressly provided for in Sections IV and V:

A. **Subdivision of Property.** Grantor shall not legally or "de facto" subdivide any portion of the Property, including the Residential Zone, in any manner. More than [list number of permitted primary and accessory structures] is prohibited. Grantor shall retain no right to use all or any portion of the Fish Habitat Zone, or any development rights associated with the Property, in conjunction with other property to create new or reconfigured lots or parcels or additional building sites, or to use all or any portion of the Fish Habitat Zone or any development rights associated with the Property to meet setback, density or open space requirements for development on other property.

B. **Improvements to the Fish Habitat Zone.** Neither Grantor nor Grantee shall construct, install or prepare the land within the Fish Habitat Zone for any buildings, structures or other improvements of any kind, including without limitation, sheds, parking areas, recreational amenities, roads, trails, access routes, overhead or underground utilities, except for the activities specifically allowed for in Section V and conducted in a manner and intensity that minimizes impacts on Fish Habitat in the Fish Habitat Zone. Impermanent structures (such as, without limitation) mobile homes, campers, other live-in vehicles, boats on trailers, horse trailers or other trailers are also prohibited within the Fish Habitat Zone. No portion of the Fish Habitat Zone shall be paved or otherwise be covered with concrete, asphalt, gravel, crushed rock, wood shavings or any other paving or surfacing material.

C. **River, Surface and Subsurface Water.** Neither Grantor nor Grantee shall make any alteration of the course of the Cedar River, modifications to the riverbed, riverbanks, or any other surface water channels or subsurface water in the Fish Habitat Zone. Neither Grantor nor Grantee shall drill any new well for any purpose on the Fish Habitat Zone.

D. **Fish Habitat, Plant Habitat, Wildlife Habitat.** Neither Grantor nor Grantee shall engage in any activity that changes, disturbs or alters the Fish Habitat, plant habitat or wildlife habitat on the Fish Habitat Zone, including without limitation any riparian habitat, riverine habitat, wetland habitat, or forest habitat in the Fish Habitat Zone. Other prohibited activities include, but are not limited to the clearing, draining, filling, dredging, piping, ditching, or diking of Fish Habitat, plant habitat, or wildlife habitat, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses.

E. **Insecticides, Herbicides, Pesticides and Biocides.** Neither Grantor nor Grantee shall apply, store, release or deposit any insecticide, herbicide, pesticide or biocide, as defined under federal or state law, within the Fish Habitat Zone; except as approved in advance by Grantee to preserve, protect or restore Fish Habitat in the Fish Habitat Zone.

F. **Other Hazardous Substances.** Neither Grantor nor Grantee shall apply, store, release or deposit any petroleum product or any other hazardous, dangerous or toxic waste or substance as now or hereafter defined by applicable law or regulation within the Fish Habitat Zone.

G. **Invasive Species.** Neither Grantor nor Grantee shall intentionally introduce invasive species or genetically modified or cloned species; provided, however, that nothing in this Easement shall be construed to prohibit the introduction of sockeye salmon to the Cedar River.

H. **Erosion or Water Pollution.** Neither Grantor nor Grantee shall undertake any use or activity within the Fish Habitat Zone that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.

I. **Natural Resource Extraction; Agriculture.** Neither Grantor nor Grantee shall conduct any exploration for, or development or extraction of, minerals and hydrocarbons on the Property. Grantor shall not extract soil, sand, gravel, or rock from the Fish Habitat Zone; provided, _____ **[if reservation of mineral rights]**. Conducting grazing of domestic animals or agricultural activities or forest product activities of any kind also is prohibited in the Fish Habitat Zone.

J. **Uncontrolled Drainage.** Neither Grantor nor Grantee shall discharge pollutants or stormwater into the Fish Habitat Zone.

K. **Waste Disposal.** Neither Grantor nor Grantee shall dump, store or dispose of wastes, refuse, and other debris of any kind, including yard waste and compost, within the Fish Habitat Zone.

L. **Removal of Nonhazardous Trees and Other Vegetation.** Neither Grantor nor Grantee shall prune, cut down or top, or otherwise destroy or remove live and dead trees and other understory vegetation within the Fish Habitat Zone; except as deemed necessary by Grantee to preserve, protect or restore the Fish Habitat in the Fish Habitat Zone, or as allowed in Section V.

M. **Wildlife Disruption.** Neither Grantor nor Grantee shall intentionally disrupt wildlife breeding and nesting activities within the Fish Habitat Zone.

N. **Vehicles.** Except as allowed in this Easement or as necessary to protect public health or safety, neither Grantor nor Grantee shall operate motorcycles, dune buggies, snow mobiles, or any type of mechanized, motorized or non-motorized vehicles within the Fish Habitat Zone.

O. **Signs.** Grantor shall not place any signage on the Fish Habitat Zone.

P. **Other Restrictions.** Grantor shall not hunt, trap, camp, burn (or otherwise use fire), discharge firearms, compost or store vehicles of any kind within the Fish Habitat Zone.

VII. NOTICE AND APPROVAL

A. **Notice.**

1. **Grantor.** Several provisions of this Easement require Grantor to notify Grantee and to receive Grantee's written approval prior to undertaking certain permitted uses and activities within the Fish Habitat Zone (e.g., V.C.1 (property protection), V.C.3 (footpath), V.C.4 (fences and gates), V.C.5 (underground utilities) and XII.D (subsequent transfers)). The purpose of requiring Grantor to notify Grantee prior to undertaking these permitted uses and activities is to afford Grantee an opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the Purpose of this Easement. Whenever such notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Easement.

2. **Grantee.** Several provisions of this Easement require Grantee to give notice to Grantor prior to undertaking certain activities within the Fish Habitat Zone (e.g., IV.B (access) and XIV.A (assignment)). Whenever such notice is required, Grantee shall notify Grantor in writing not less than thirty (30) days prior to the date Grantee intends to undertake the use or activity in question, unless otherwise provided for by this Easement.

B. **Approval.** Where approval by one of the parties is required under this Easement, such approval shall be granted or withheld in writing within thirty (30) days of receipt of a written request for approval, and such approval shall not be unreasonably withheld.

1. **Grantor.** If Grantor must undertake emergency action under Section V.C.1 to protect the public health or safety on the Property or must act by and subject to compulsion of any governmental agency, Grantor may proceed with such action without Grantee's approval only if Grantor notifies the Grantee prior to taking such action and Grantee cannot provide its approval, with or without conditions, within such time as is

reasonable under the circumstances and restores the Fish Habitat Zone to a condition prior to such use or activity to the maximum extent possible.

2. Grantee. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the use or activity as proposed would be inconsistent with the Purpose or other terms and conditions of this Easement. Grantee's approval may include reasonable conditions that must be satisfied in undertaking the proposed use or activity.

3. Failure to Approve Within the Required Time. When approval is required under this Easement, and when such approval is not granted or not withheld within the time period and manner set forth in this subsection, approval of the permitted use or activity in question may be presumed.

C. Addresses. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class certified mail, postage prepaid, addressed as follows:

To Grantor:

To Grantee:

City of Seattle
Seattle Public Utilities
700 5th Ave., Suite 4900
P.O. Box 34018
Seattle, WA 98124-4018
Attn: HCP Program Manager

With a copy to:

City of Seattle
Seattle Public Utilities
Real Property Services
P.O. Box 34018
Seattle, WA 98124-4018

or to such other address as either party designates by written notice to the other.

VIII. DISPUTE RESOLUTION

A. Preventive Discussions. Grantor and Grantee will promptly give the other notice of problems or concerns arising in connection with the other's actions under this Easement or the use of or activities or conditions on the Property, and will meet as needed,

but no later than fifteen (15) days after receipt of a written request for a meeting, to minimize the same.

B. **Alternative Dispute Resolution.** If a dispute is not resolved through preventive discussions under subsection A above, Grantor and Grantee may by mutual agreement submit the matter to mediation or arbitration upon such rules of mediation or arbitration as Grantor and Grantee may agree upon.

IX. GRANTEE'S REMEDIES

A. **Notice of Failure.** If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Fish Habitat Zone resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Fish Habitat Zone so injured.

B. **Grantor's Failure to Respond.** Grantee may bring an action as provided in Section C if Grantor:

1. Fails to cure the violation within thirty (30) days after receipt of a notice of violation from the Grantee; or
2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.

C. **Grantee's Action.** Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:

1. To enjoin the violation, ex parte as necessary, by temporary or permanent injunction;
2. To recover any damages to which it may be entitled for violation of the terms of this Easement or for injury to any Fish Habitat protected by this Easement, including damages for the loss of Fish Habitat; and
3. To require the restoration of the Fish Habitat Zone to the condition that existed prior to any such injury.

Without limiting Grantor's liability in any way, Grantee shall first apply any damages recovered to the cost of undertaking corrective or restoration action in the Fish Habitat Zone.

D. **Immediate Action Required.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Fish Habitat in the Fish Habitat Zone, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.

E. **Nature of Remedy.** Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantee shall be entitled to the injunctive relief described in this section in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

F. **Costs of Restoration.** In the event Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, family members, invitees or licensees in violation of the terms of this Easement shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns, against whom a judgment is entered. In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity.

G. **Grantee's Forbearance.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term or of any right under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

H. **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Fish Habitat Zone or to recover damages for any injury to or changes on the Fish Habitat Zone resulting from causes beyond Grantor's control, including, without limitation, natural changes, climate change, fire, flood, storm, or earth movement, or from acts of trespassers, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Fish Habitat Zone resulting from such causes.

I. **Estoppel Certificates.** Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, that certifies, to the best actual knowledge of Grantee's HCP Program Manager (or successor

thereto), whether or not Grantor is in compliance with all obligation of Grantor contained in this Easement, provided that any such document shall be in form and substance satisfactory to Grantee. Such certification shall be limited to the condition of the Property and Fish Habitat Zone as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within sixty (60) days of receipt of Grantor's written request therefor.

X. PUBLIC ACCESS

No general public access to any portion of the Property, including the Fish Habitat Zone, is conveyed by this Easement. Access by any person to the Fish Habitat Zone is only through special arrangement with Grantor and Grantee, in accordance with the procedures outlined in Section IV.C. Such access may not unreasonably interfere with the Fish Habitat in the Fish Habitat Zone or with Grantor's quiet enjoyment of the Property.

XI. COSTS, LIABILITIES AND INSURANCE, TAXES, AND INDEMNIFICATION

A. **Costs, Liabilities and Insurance.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Grantor shall keep the Property free and clear of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor; provided that the Property shall be deemed to be free of such liens if Grantor is diligently challenging the application of such liens to the Property.

B. **Taxes.** Grantor shall pay all taxes levied against the Property by government authority as they become due, and shall furnish the Grantee with satisfactory evidence of payment upon request. If Grantor fails to pay any taxes when due, Grantee is authorized, but in no event obligated, to make or advance such payment of taxes upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the maximum rate allowed by law.

C. **Grantor Indemnification.** Grantor shall hold harmless, indemnify, and defend the Grantee, its successors and assigns, and its officers, employees, contractors, agents, invitees and their successors, and assigns (collectively "Indemnified Grantee Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with:

1. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, event or other matter related to or

occurring in or about the Property, except to the extent caused by the acts or omissions of the Indemnified Grantee Parties;

2. Violations or alleged violations of any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, except to the extent caused by the acts or omissions of any of the Indemnified Grantee Parties on the Property; and

3. The obligations specified in subsections A and B of this section.

D. **Grantee Indemnification.** Grantee shall hold harmless, indemnify and defend Grantor, its successors and assigns, and its officers, employees, agents, contractors and invitees, and their successors and assigns (collectively, "Indemnified Grantor Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including without limitation reasonable attorney's fees, arising from or in any way connected with:

1. Injury to or death of any person, or physical damage to any property, resulting from any act or omission of Grantee, its officers, employees, agents, contractors or invitees related to or occurring in or about the Property that is a consequence of such persons' willful misconduct or negligent actions or omissions on or about the Property, except to the extent caused by the acts or omissions of the Indemnified Grantor Parties; and

2. Violations or alleged violations of any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials by Grantee, its officers, employees and agents, except to the extent caused by the acts or omissions of the Indemnified Grantor Parties.

XII. EXTINGUISHMENT AND SUBSEQUENT TRANSFER

A. **Extinguishment.** If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can be terminated or extinguished, whether in whole or in part, only by mutual agreement of Grantor and Grantee or by judicial proceedings in a court having jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Section XII.B of this Easement.

B. **Valuation.** This Easement constitutes a real property interest immediately vested in Grantee. For the purpose of Section XII.A of this Easement, the parties hereto stipulate that this Easement has a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in the value

after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. For the purposes of this paragraph, Grantor and Grantee agree that the value of the Easement at the time of this grant is evidenced by that certain real property appraisal prepared by _____, dated _____, on file with Grantee. This ratio is _____ and shall remain constant.

C. **Condemnation.** In the event that the Property is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.

D. **Subsequent Transfers.** Grantor agrees to:

1. Incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest;

2. Describe this Easement in and append it to, any executory contract for the transfer of any interest in the Property;

3. Give written notice to the Grantee of the transfer of any interest no later than forty-five (45) days prior to the date of such transfer.

The failure of Grantor to perform any act required by this Section shall not impair the validity of this Easement or limit its enforceability in any way.

XIII. AMENDMENT

A. **[Survey]**. Grantee shall arrange for a survey and field marking of the exact boundaries of the Residential Area within three months of recording of this Easement, which survey may be completed through use of a global positioning system ("GPS"). Grantor and Grantee shall promptly record the survey and legal description of the Residential Area as an amendment to Appendix B of this Easement. Failure to complete this survey and record this amendment shall not affect the enforceability or validity of any other provision of this Easement. **[Necessary only if there is a residential zone]**

B. **General.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantee and Grantor are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of the Grantee under any applicable laws, including RCW 64.04.130, Chapter 84.34 RCW, or Section 170(h) of the Internal Revenue Code, as amended (or any successor provision(s) then applicable), and any amendment shall be consistent with the Purpose of this Easement, and shall not affect its perpetual duration. Any

such amendment shall be recorded in the official records of King County, Washington, and any other jurisdiction in which such recording is required.

XIV. ASSIGNMENT

This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to a government unit or other nonprofit organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.250 (or any successor provision(s) then applicable). As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. Grantor hereby acknowledges its authorization and approval of the assignment of certain stewardship rights in this Easement to the Cascade Land Conservancy. The stewardship assignment shall be substantially in the form attached to this Easement as Appendix F.

XV. RECORDATION

Grantee may record this Easement, and any amendments thereto, in timely fashion in the official records of King County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement. Alternatively, Grantee may record a memorandum of this Easement and any amendments thereto, in which event both parties shall execute the necessary documents.

XVI. GENERAL PROVISIONS

A. **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Washington.

B. **Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the reservation to effect the Purpose of this Easement and the policy and purposes of RCW 64.04.130 and Chapter 84.34 RCW. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Grantor and Grantee agree that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Easement. In the event of any conflict between a map and a legal description, established by GPS or otherwise, the latter shall control.

C. **Severability.** If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

D. **Entire Easement.** This instrument sets forth the entire agreement of the parties with respect to the Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section XIII.

E. **No Forfeiture.** Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.

F. **"Grantor" - "Grantee".** The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively, the above-named Grantor, and its personal representatives, heirs, successors, and assigns, and the above-named Grantee, and its successors and assigns.

G. **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

H. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's entire interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive the transfer.

I. **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

J. **Recitals and Appendices.** All recitals and Appendices to this Easement are incorporated herein by this reference.

K. **Effective Date.** The effective date of this Easement is the date of recording in the records of King County, Washington.

[L. **Subordination.** At the time of conveyance of this Easement, the Property is subject to a deed of trust against the Property. The beneficiaries of the deed of trust have agreed by either release and reconvey the deed of trust or by separate instrument, which will

be recorded concurrently with this Easement, to subordinate their rights in the Property to this Easement or to the extent necessary to permit Grantee to enforce the Purpose of this Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the beneficiary under the deed of trust.]

XVII. SCHEDULE OF APPENDICES

- A. Legal Description of the Property**
- B. Description[s] of the [Property] [Residential and Fish Habitat Zones]**
- C. Permitted Title Exceptions**
- D. Agreement for Release from Liability**
- E. Acknowledgment of Present Conditions Report**
- F. Stewardship Assignment**

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument.

Grantor

Dated: _____

[Appropriate Grantor acknowledgment]

ACCEPTANCE

Pursuant to the authority conferred by Ordinance _____ passed _____, I accept on behalf of The City of Seattle the interest in real property conveyed by this Deed of Conservation Easement dated _____, 20__.

Dated: _____

THE CITY OF SEATTLE

By: Chuck Clarke, Director
Seattle Public Utilities

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this day personally appeared before me, _____, known to me to be the Director of Seattle Public Utilities of The City of Seattle, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated he was authorized to execute said instrument.

Given under my hand and official seal this ____ day of _____, 200_.

NOTARY PUBLIC in and for the State of
Washington, residing at

My Commission expires: _____

APPENDIX A

LEGAL DESCRIPTION OF THE PROPERTY

APPENDIX B

**DESCRIPTION[S] OF THE [PROPERTY] [RESIDENTIAL AND FISH HABITAT
ZONES]**

APPENDIX C

PERMITTED TITLE EXCEPTIONS

APPENDIX D

Agreement for Release from Liability

In consideration for permission to enter the Fish Habitat Zone of that certain property, located at _____, Washington (the "Property") and owned by _____ (hereafter the "Fish Habitat Zone"), to observe and study the ecology of the Fish Habitat Zone, I hereby acknowledge and agree to the following:

1. My activities in the Fish Habitat Zone involve many risks, including, but not limited to, risks of bodily injury/illness or death resulting from accident, poisonous plants or animals;
2. I am entering the Fish Habitat Zone at my own risk and I assume full responsibility for the risk of bodily injury or death, whether foreseen or unforeseen, in connection with my activities in the Fish Habitat Zone;
3. I HEREBY RELEASE, WAIVE AND DISCHARGE _____ and their heirs, personal representatives, successors, and assigns, the City of Seattle ("City") and its officers, employees, agents, successors, and assigns, and the Cascade Land Conservancy ("Cascade") and its officers, employees, agents, successors, and assigns from any liability for harm or loss suffered by me in connection with my activities in the Fish Habitat Zone or my access thereto across the Property, WHETHER BY NEGLIGENCE OR NOT;
4. I FURTHER SAVE AND HOLD HARMLESS _____, and their heirs, personal representatives, successors or assigns, the City, and its officers, employees, agents, successors, and assigns, and Cascade and its officers, employees, agents, successors, and assigns from any and all liability, actions, causes of action, claims, demands of every kind and nature whatsoever by me or my family, estate, heirs, executors, administrators, legal representatives, successors or assigns arising out of my activities in the Property;
5. I hereby expressly agree that this "AGREEMENT FOR RELEASE FROM LIABILITY" is intended to be as broad and inclusive as permitted by the laws of the State of Washington, and if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full force and effect; and

6. This "AGREEMENT FOR RELEASE FROM LIABILITY" contains the entire agreement between the parties hereto and that the terms of this Agreement are contractual in nature and not a mere recital; I understand all of the terms; and I am of lawful age and legally competent to sign this Agreement.

** I HAVE FULLY INFORMED MYSELF OF THE CONTENT OF THIS "AGREEMENT FOR RELEASE FROM LIABILITY" BY READING IT CAREFULLY BEFORE SIGNING IT.

Name (print)

Signature

Date

City/County/State

APPENDIX E

Acknowledgment of Easement Documentation Report

Grantor and the HCP Program Manager of the City of Seattle, Seattle Public Utilities each acknowledge that (s)he has read the "Present Conditions Report," dated _____, 200_, and that the report accurately reflects the currently available baseline data regarding the condition of the Property subject to the Easement as of the date of conveyance of the Easement.

THE CITY OF SEATTLE

_____,

By: _____

Its _____
Seattle Public Utilities

Date: _____

Date: _____

APPENDIX F

STEWARDSHIP ASSIGNMENT

This STEWARDSHIP ASSIGNMENT (this "Assignment") is executed as of the _____ day of _____, 200_, by THE CITY OF SEATTLE, a municipal corporation of the State of Washington ("Assignor" or the "City"), to and in favor of CASCADE LAND CONSERVANCY, a Washington nonprofit corporation ("Assignee" or "Cascade") (collectively, the "Parties").

RECITALS

A. Assignor has entered into a conservation easement recorded under Auditor's File No. _____ in King County, Washington ("Easement") with _____ (the "Easement Grantor") in regards to property located at _____, the legal description of which is set forth in Appendix A attached hereto (the "Property").

B. The Easement provides for preservation, restoration, enhancement and stewardship of high quality spawning, rearing or refuge habitat for anadromous fish species and the natural features and processes sustaining such habitat ("Fish Habitat") within the portion of the Property described in Appendix B attached hereto (the "Fish Habitat Zone").

C. The Easement allows Assignor to assign to Assignee certain rights for access to and stewardship of the Fish Habitat Zone.

D. In order to implement certain obligations of Assignor under the Cedar River Watershed Habitat Conservation Plan, dated April 21, 2000 ("HCP"), Assignor and Assignee have entered into the Agreement for Acquisition and Management of Fish Habitat dated as of _____, 200_ (the "Agreement"). Among other things, the Agreement obligates Assignee to manage the Fish Habitat Zone to preserve, restore and/or enhance Fish Habitat. Assignor is assigning this Assignment to Assignee to effectuate Assignee's obligations under the Agreement.

Now, therefore, the City and Cascade agree as follows:

AGREEMENT

1. **Term.** This Assignment shall be in full force and effect from the date first set forth above until Assignor no longer is the holder of the Easement, unless earlier terminated in accordance with the provisions hereof.

2. **Assignment and Assumption.** For and in consideration of Cascade's assumption of the obligations and responsibilities set forth in the Agreement and Section 3 of this Assignment, the City does hereby partially assign, transfer, set over, convey and deliver to Cascade the following undivided rights under the Easement, which rights shall be held in common by the City and Cascade:

A. Identification, Protection, Restoration and Enhancement. To identify, preserve, and protect Fish Habitat within the Fish Habitat Zone, and to enhance and/or restore Fish Habitat therein by mutual agreement with the City.

B. Access.

(1) To enter the Fish Habitat Zone, as deemed necessary by Cascade, for the purpose of making a general inspection to assure compliance with the Easement. Cascade shall provide the Easement Grantor and the City with prior written notice of the inspection and shall conduct the inspection at a mutually agreeable date and time. Cascade shall enter the Fish Habitat Zone along established driveways and/or pathways (including lawns) across the Property, or along such route as may subsequently be identified by the Easement Grantor and the City.

(2) To enter the Fish Habitat Zone along established driveways and/or pathways (including lawns) across the Property, or along such route as may subsequently be identified by the Easement Grantor and the City, at such other times as are necessary to undertake restoration, enhancement and other land management activities in the Fish Habitat Zone. Cascade shall provide the Easement Grantor and the City with prior written notice of the restoration, enhancement and/or land management activities and conduct such activities at mutually agreeable date(s) and time(s).

C. Observation and Study. To allow persons or small groups to enter the Fish Habitat Zone along established driveways and/or pathways (including lawns) across the Property, or along such route as may subsequently be identified by the Easement Grantor and the City, to observe and study the ecology of the Fish Habitat Zone; provided that any such persons or groups only accompany Cascade when it is otherwise inspecting the Property, agree to provide the Easement Grantor, the City and Cascade with copies of any data or reports resulting from such research, and agree to abide by any other reasonable restrictions placed on access by the Easement Grantor and the City at the time arrangements are made to observe and study the ecology of the Fish Habitat Zone. All persons or groups given permission to enter the Fish Habitat Zone shall sign a waiver, substantially in the form attached to the Easement as Appendix D, releasing the Easement Grantor, the City and Cascade from liability to the extent permitted by law.

D. Signs. Upon the City's request, to place a limited number of signs to inform the public about the Easement. Location of signs shall be by mutual agreement of the Easement Grantor and the City.

3. **Assignee's Responsibilities.** To accomplish the Purpose of the Easement, Cascade shall be responsible for the general upkeep and maintenance of the Fish Habitat Zone, consistent with the uses and activities reserved to the Easement Grantor under this Easement. General upkeep and maintenance entails the following:

A. Monitoring. Conducting regular monitoring of the Protected Property (minimum of one visit per calendar quarter depending on activity) to check for dumping and other illegal activity, to evaluate compliance with terms of the Easement and to implement the general maintenance and stewardship tasks described below.

B. General Maintenance

(1) Maintaining appropriate perimeter postings of the Fish Habitat Zone, such as those relating to trespassing, hunting and public access generally;

(2) Maintaining any fences, gates or barriers intended to keep motorized vehicles off the Fish Habitat Zone in a condition substantially similar to their condition as of the date of this Easement;

(3) Removing garbage, closing trails, revegetating informal trails or otherwise taking reasonable measures to protect Fish Habitat in response to unauthorized uses of the Fish Habitat Zone by third parties other than Assignor; and

(4) Advising Assignor, as grantee of the Easement, of any potential violations thereof.

C. General Stewardship

(1) Routine ecological stewardship. Providing stewardship services to retain and improve levels of biodiversity within the Fish Habitat Zone. Cascade will conduct at least three (3) stewardship event per year in the Fish Habitat Zone; provided, however, that this affirmative obligation for the Fish Habitat Zone shall be deemed to be met by Cascade if it has otherwise provided for the year in question at least three (3) stewardship events on each of seven (7) other properties acquired under the Agreement (collectively, the "Properties"). Each stewardship event involving volunteers shall use a minimum of fifteen (15) Conservation Corps or volunteer workers for a minimum of six (6) hours (not including transportation time). Cascade, in consultation with the City, will determine whether to use volunteer or skilled labor or some combination of the two, based upon the appropriate skill level required, safety considerations, technical skill requirements, and efficacy in carrying out the required work tasks. Stewardship events for invasive weed removal shall occur during the months of February, July and September of the same year, unless otherwise agreed to in writing. Typical ecological routine maintenance activities include:

(a) Controlling noxious weeds, invasive species and pests as required by applicable law; and

(b) Planting of native vegetation.

(2) Capital Projects. Cascade will provide fund development and project planning for capital projects in the Fish Habitat Zone. Cascade will oversee implementation of any funded projects; staff time shall be paid through such project funds. Cascade will have primary responsibility of prioritizing and identifying the project site and activities (with guidance from and upon mutual agreement with the City), developing matching funds, and overseeing implementation. Capital projects shall be approved by the City in writing prior to implementation. Typical capital projects include:

(a) Erosion control;

(b) Bank stabilization using live-stake techniques; and/or

(c) Installation of large woody debris.

(3) Cascade and the City shall meet at least annually prior to the growing season to plan for Cascade's activities, including General Stewardship activities, on the Property and other Properties. The City and Cascade shall endeavor to be as efficient as possible in allocating the portion of the Annual Payment (as hereinafter defined) designated for General Stewardship among the above-described General Stewardship activities and across all the Properties. The parties recognize that the stewardship needs of the Properties may be unequal and, therefore, the expenditure of money for such activities on the Property in a given year may be zero or less than the amount spent on other Protected Properties. If the City and Cascade disagree on the aforesaid plan, the City's plan shall be adopted; provided, that Cascade shall be under no obligation to expend more effort on General Stewardship activities on the Property and all other Properties in a given year than the General Stewardship portion of the anticipated Annual Payments. Cascade shall inform the City of each of the General Stewardship events and activities scheduled on the Property at least two weeks prior to its occurrence.

D. Specific Stewardship Actions. Implementing those stewardship elements (which may include demolition and removal of improvements existing as of the date of this Easement) specifically called out in the Present Conditions Report, as defined in the Easement, and agreed to by the City; provided, that Cascade shall have no right to any payment from the City for such actions without the prior written approval of the City, nor shall any portion of the Annual Payment be spent on Specific Stewardship Actions.

E. Reporting. No later than December 31 of each year for so long as Assignee has management and stewardship responsibilities under this Assignment with respect to the Property, providing Assignor with a report that summarizes such activities during the previous year. The report shall indicate the nature of habitat improvements, structures, trails or other unauthorized man-made improvements, or potential threats to Fish Habitat, actions taken to preserve Fish Habitat, other general maintenance or general stewardship activities (including fund

development for capital projects) required by or otherwise consistent with this Assignment, and other relevant information that may be requested by Assignor.

4. **Assignee's Exercise of Rights and Responsibilities**

Cascade hereby represents and warrants that its exercise of rights and responsibilities under this Assignment will be consistent with the Purpose of the Easement. In fulfilling its responsibilities hereunder, Assignee shall not be deemed to be an employee of Assignor, or shall Assignee be authorized to act as the agent or legal representative of Assignor for any purpose whatsoever. Assignee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of Assignor or to bind Assignor in any manner or thing whatsoever. Other than as specified herein, this Assignment is not intended to impose any legal or other responsibility on Cascade.

5. **Assignor's Responsibilities**

A. Annual Payment. Until January 1, 2051, the City shall pay Cascade \$3,000 per year (in 2005 dollars) (the "Annual Payment") for its maintenance and stewardship of the Property in accordance with this Assignment. Of the Annual Payment, \$2,250 shall be used by Cascade for Monitoring and General Maintenance of the Property (as described in sections 3.A and 3.B) and \$750 shall be used for General Stewardship (as described in section 3.C) of all Properties. In the event that Cascade is able to provide Monitoring and General Maintenance of the Property for less than \$2,250 in a given year, Cascade shall increase the work to be performed and Cascade's expenditure for General Stewardship of the Properties in the amount equaling the under-expenditure for Monitoring and General Maintenance of the Property. In the event that the Monitoring and General Maintenance required under section 3 for the Property in a given year costs more than \$2,250, Cascade shall be responsible for such additional costs. Notwithstanding the foregoing, in the event that unforeseeable circumstances occur, Cascade may request modification of its responsibilities under section 3 and/or an increased Annual Payment, and the City, in its sole discretion, will determine whether to grant such request.

The Annual Payment shall be prorated for a portion of a year and adjusted for inflation by use of the Consumer Price Index or, when such index is unavailable, by use of recent Consumer Price Indices. Examples of inflation adjustments are shown in **Schedule 1** hereto. Between December 1 and December 31 of each year through 2050, Cascade shall send City an invoice for the Annual Payment, documenting to City's reasonable satisfaction the Monitoring and General Maintenance performed on the Property and the General Stewardship performed on all Properties during that calendar year, and the City shall pay such invoice within 30 days of receipt.

B. End of Annual Payment. Beginning on January 1, 2051 and continuing thereafter, the City no longer shall pay for maintenance and stewardship, but Cascade shall continue to provide all such services to the Property in accordance with this Assignment if, and for so long as, the City holds the Easement. Notwithstanding the preceding sentence, on

and after January 1, 2051, Cascade, in its sole discretion may, upon thirty (30) days prior written notice to the City, terminate Cascade's obligations in accordance with section 7. Other than as specified herein, this Assignment is not intended to impose any legal or other responsibility on Assignor.

6. Enforcement of Responsibilities under Assignment

A. General. The City shall have the right to compel Cascade's fulfillment of its responsibilities under this Assignment and also to release Cascade from and terminate this Assignment, as set forth in this Section 6. Cascade shall have the right to compel the City's fulfillment of its responsibilities under this Assignment, as set forth in this Section 6. If one Party determines that the other party is not diligently performing its responsibilities under this Assignment or is otherwise in violation of its terms, the Party making such determination shall give the other Party written notice of the nonperformance or violation and thirty (30) days to correct it, or, under circumstances where the nonperformance or violation cannot reasonably be cured within such thirty (30) day period, such longer time as is reasonably necessary, provided that such other Party has begun curing the nonperformance or violation within such thirty (30) day period and is proceeding diligently to cure the nonperformance or violation, before proceeding to informal dispute resolution as described in Section 7.

B. Informal Dispute Resolution. If the cure period described in Section 6.A, as applicable, has run and a cure not effectuated, Cascade's King County Senior Conservation Director and the City's HCP Program Manager, or their successors, shall negotiate in good faith to resolve the dispute, except in a situation that could significantly diminish or impair the Fish Habitat in the Fish Habitat Zone of the Property. If the above-described persons cannot resolve the dispute in a timely manner, it shall be referred to the City's Resource Planning Branch Executive, Seattle Public Utilities, and Cascade's President, or their successors. Only upon failure to resolve the dispute in a timely manner through the foregoing process may the City pursue the remedies set forth in Section 6.C.

C. Remedies. Either Party may bring an action at law or in equity to enforce the terms of this Easement, by seeking to enjoin the violation temporarily or permanently, to require restoration of the Protected Property to its condition prior to the injury and/or to recover any damages to which that Party may be entitled, as applicable. In addition, in the event that Assignee's nonperformance of its responsibilities under, or violation of, the terms of this Assignment is not resolved through informal dispute resolution, Assignor may, in its sole discretion, terminate this Assignment. Upon Assignor's request, Assignee shall execute a document evidencing such termination and Assignor may record it. The failure of either Party to discover a violation or to take immediate legal action shall not bar it from doing so at a later time, provided that each Party must act with reasonable promptness upon discovery to correct any claimed violation. Nothing herein shall limit the Parties' other remedies.

7. Termination and Release

A. Automatic Termination. Notwithstanding any provision of this Assignment to the contrary, if at any time during the term of this Assignment (1) Cascade, in its sole discretion, determines that it has become impractical for Cascade to undertake its rights and/or responsibilities under this Assignment and Cascade has given at least thirty (30) days prior written notice to the City, (2) Cascade ceases to exist or to be authorized to acquire and hold conservation easement interests under RCW 64.04.130 and 84.34.210 (or any successor provision(s) then applicable), (3) bankruptcy or insolvency proceedings are commenced against Cascade, (4) the Agreement has been terminated for any reason by Cascade, in accordance with its terms, or (5) the procedures described in Section 6 have been followed, and the City and Cascade have been unable to resolve a dispute about Cascade's fulfillment of its obligations under this Assignment, then this Assignment and Cascade's rights and responsibilities hereunder shall terminate automatically upon the City's notice of same to Cascade.

B. Optional Termination. If the City terminates the Agreement, the City may leave any then-existing Assignments in effect or, in the City's sole discretion, require their termination. Said termination shall be effective upon notice from the City. Upon request, Cascade shall execute such documents as the City reasonably requests to evidence such termination. In addition, on and after January 1, 2051, Cascade in its sole discretion may terminate this Assignment by giving thirty (30) days prior written notice of same to the City. In such event, the Parties shall execute and record the applicable document.

8. **No Interest in Easement.** Cascade acknowledges that it has no compensable interest in the Easement. In particular, Cascade acknowledges that if the Easement is extinguished or the Fish Habitat Zone is taken, in whole or in part, by exercise of the power of eminent domain, only the City (and not Cascade) is entitled to compensation.

9. **Liability and Indemnification**

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

B. Cascade shall protect, defend, indemnify and save harmless the City and its officers, employees, agents and contractors, and their successors and assigns (collectively, the "Indemnified Parties") from and against any and all liabilities, penalties, losses, costs, damages, claims, causes of action, demands or judgments, or awards of damages, including reasonable attorneys' fees, arising out of or in any way connected with a breach of this Assignment by Cascade, its officers, agents or employees, negligent action or inaction of

Cascade, its officers, agents or employees in the acquisition or stewardship of the Properties, or their failure to comply with all applicable laws. For purpose of this Assignment only, Cascade waives the immunity granted it for industrial insurance claims pursuant to Revised Code of Washington Chapter 51 to the extent necessary to extend its obligations under this section to any claim, demand, or cause of action brought by or on behalf of any employee of Cascade, including judgments, awards and costs arising therefrom and including attorney's fees. The Parties acknowledge that these provisions were specifically negotiated and agreed by them.

10. **Interpretation.** The defined terms in this Assignment shall have the meaning provided in the Easement unless specifically defined herein. All recitals and Appendices to this Assignment are, by this reference, incorporated herein.

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

ASSIGNOR (CITY):

THE CITY OF SEATTLE, a Washington
municipal corporation

By _____
Director, Seattle Public Utilities

ASSIGNEE (CASCADE):

CASCADE LAND CONSERVANCY, a
Washington nonprofit corporation

By _____
Its _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 200_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of Seattle Public Utilities of The City of Seattle, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

Given under my hand and official seal hereto affixed the day and year in this certificate first above written.

(Signature of Notary)

(Print or stamp name of Notary)

Notary public in and for the State of
Washington, residing at _____

My appointment expires: _____
STATE OF WASHINGTON)
) ss.

COUNTY OF KING)

On this _____ day of _____, 200_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of the Cascade Land Conservancy, the non-profit corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

Given under my hand and official seal hereto affixed the day and year in this certificate first above written.

(Signature of Notary)

(Print or stamp name of Notary)

Notary public in and for the State of
Washington, residing at _____

My appointment expires: _____

APPENDIX A

LEGAL DESCRIPTION OF THE PROPERTY

APPENDIX B

DESCRIPTION OF THE FISH HABITAT ZONE

Schedule 1

EXAMPLES SHOWING INFLATION ADJUSTMENTS OF STEWARDSHIP COSTS

1. Property acquired in 2007: initial adjustment from 2005 to 2007 where all indices are known:

$$\frac{\text{Average of Monthly Jan-Dec CPI Indices for 2007}}{\text{Average of Monthly Jan-Dec CPI Indices for 2005}} = \frac{194}{189} = 1.03$$

Adjusting from 2007 to 2008:

$$\frac{\text{Average of Monthly Jan-Dec CPI Indices for 2008}}{\text{Average of Monthly Jan-Dec CPI Indices for 2007}} = \frac{196}{195} = 1.01$$

2. Property acquired in 2008: initial adjustment from 2005 to 2008 where 2008 indices are not known, so the rate of inflation from 2007 to 2008 is estimated by the inflation between 2006 and 2007:

$$\begin{array}{ccc} \frac{\text{Average of Monthly Jan-Dec CPI Indices for 2007}}{\text{Average of Monthly Jan-Dec CPI Indices for 2005}} & \times & \frac{\text{Average of Monthly Jan-Dec CPI Indices for 2007}}{\text{Average of Monthly Jan-Dec CPI Indices for 2006}} \\ \\ \frac{194}{189} & \times & \frac{194}{192} = 1.04 \end{array}$$

**EXHIBIT D TO AGREEMENT FOR ACQUISITION AND MANAGEMENT
OF FISH HABITAT**

FORM OF REAL ESTATE PURCHASE AND SALE AGREEMENT

This REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is entered into by and between _____, _____ ("Seller"), and CASCADE LAND CONSERVANCY, a Washington nonprofit corporation ("Cascade"), and its successors and assigns, as of the date appearing in the last paragraph of this Agreement ("Effective Date"). Cascade, its successors and assigns shall hereinafter be referred to collectively as "Buyer." Buyer and Seller shall hereinafter be collectively referred to as the "Parties."

RECITALS

A. Seller owns certain real property situated in King County, Washington, more particularly described on **Appendix "A"** attached hereto and defined in Section 1 below (the "Property").

B. Seller desires to sell **[the Property/a conservation easement over the Property]** to Buyer, and Buyer desires to purchase **[the Property/a conservation easement over the Property]** from Seller on the terms and conditions of this Agreement. **[The conservation easement over the Property shall be substantially in the form provided at Appendix "C" attached hereto ("Easement").]**

C. Seller acknowledges that Cascade intends to assign this Agreement and the rights, title and interest herein to the City of Seattle (the "City") before Closing (as defined below) and that such assignment shall be a condition of Closing. If and until such assignment occurs, "Buyer" shall refer solely to Cascade. Upon assignment to and assumption by the City of all of the rights and interest in this Agreement and the Property, "Buyer" shall refer solely to the City.

[D. Seller believes that the purchase price specified herein for the Property/the Easement is below the fair market value of the Property/the Easement. Seller intends that the difference between the purchase price and fair market value shall be a charitable contribution to Buyer. However, Buyer makes no representation as to the tax consequences of the transaction contemplated by this Agreement. Seller will obtain independent tax counsel and be solely responsible for compliance with the gift value substantiation requirements of the Internal Revenue Code. To the extent that the purchase price is below fair market value, the Parties agree that it does not reflect the existence of defects in the Property, such as environmental conditions requiring remediation, known to Seller or Buyer.]

AGREEMENT

In consideration of the foregoing and the performance of the mutual covenants herein contained, Seller and Buyer agree as follows:

1. **PROPERTY:** The "Property" subject to this Agreement consists of all of the following:

1.1 That certain real property legally described in the attached Appendix "A," including all improvements thereon ("Land").

1.2 [for purchase of Property only] All rights, privileges and easements appurtenant to the Land, including without limitation all minerals, oil, gas and other hydrocarbon substances on the Land, all development rights, timber, timber rights, air rights, water, water rights and water stock relating to the Land, and any and all easements, rights-of-way and other appurtenances used in connection with the beneficial use and enjoyment of the Land (collectively, the "Appurtenances").

2. **PURCHASE OF PROPERTY/EASEMENT:** Subject to the terms and conditions of this Agreement, Seller agrees to sell and Buyer agrees to purchase the **Property/Easement**.

2.1 **Purchase Price:** The total purchase price for **the Property/the Easement is** _____ **and No/100 Dollars (US**
\$ _____ **.00) ("Purchase Price").** The Purchase Price is payable at Closing in cash.

2.2 **Earnest Money:** Upon execution of this Agreement, Buyer will execute a promissory note in favor of Seller in the amount of _____ and No/100 Dollars (\$ _____ .00), in the form attached hereto as **Appendix "B"** (the "Note") and incorporated herein by this reference, and deposit the Note with Pacific Northwest Title Insurance Company ("Escrow Holder") to be held in escrow as earnest money. The Note shall be due on delivery of Buyer's notice that the contingencies described in Section 4 have been satisfied or removed. The funds deposited in payment of the Note (the "Deposit") shall be applied to the Purchase Price at Closing. Escrow Holder shall place the Deposit in an interest bearing money market-type account. Interest shall be for Buyer's benefit. The Note or Deposit (plus interest), as applicable, shall be refunded to Buyer unless all of Buyer's conditions hereunder are satisfied.

IN THE EVENT BUYER FAILS, WITHOUT LEGAL EXCUSE, TO COMPLETE THE PURCHASE OF THE **PROPERTY/EASEMENT** AS CONTEMPLATED IN THIS AGREEMENT, THE DEPOSIT SHALL BE FORFEITED TO SELLER AS LIQUIDATED DAMAGES TO BE THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO SELLER. Buyer and Seller agree that the liquidated damages represent a reasonable sum considering all of the circumstances existing on the date of this Agreement and represent a reasonable

estimate of the losses that Seller will incur if Buyer fails to purchase the **Property/Easement** after all conditions precedent to Buyer's performance have been completely satisfied in Buyer's sole and absolute discretion.

3. TITLE:

3.1 Title & Conveyance: At Closing, Seller will execute and deliver to Buyer a [statutory warranty deed/special warranty deed] conveying good and marketable fee simple title to the **Property/Easement** free and clear of all defects or encumbrances done or suffered by Seller except for the lien of real estate taxes and drainage service charges and other governmental assessments not yet due and payable and those defects and/or encumbrances (if any) accepted by Buyer as Permitted Exceptions pursuant to Section 3.3. Seller shall approve the form of the deed(s), including any Deed of Conservation Easement, provided that Seller may withhold its approval only to the extent that such deed(s) contain(s) representations, warranties or covenants or other obligations on the part of Seller that exceed those provided by Seller under this Agreement. Buyer shall provide the forms of deed(s) to Seller for its review and approval no later than the end of Buyer's feasibility contingency provided in Section 4.2. If Seller objects to the form of the deed(s) on a basis allowed for herein and Buyer revises the form of the deed(s) to remove such objection, Seller shall grant its approval of the form.

3.2 Title Insurance: Buyer shall obtain a title insurance commitment (the "Commitment") issued by the Pacific Northwest Title Insurance Company (the "Title Company"), showing marketable title to the Property vested in Seller. At Closing, Buyer shall receive an owner's Standard ALTA (1970 with 1984 revisions) policy of title insurance, dated as of the Closing date and insuring Buyer in the amount of the Purchase Price against loss or damage by reason of defect in the title to the Property subject only to the printed exclusions appearing in the policy form and any Permitted Exceptions (as defined below).

3.3 Review of Title: Buyer shall notify Seller, by the end of Buyer's Feasibility Contingency Period, as defined in Section 4, either (a) that Buyer has approved the Commitment and thereby intends to proceed with the purchase of the **Property/Easement** or (b) of those exceptions that Buyer objects to and the reason for such objection (any exceptions contained within the Commitment not so objected to shall thereafter be "Permitted Exceptions"). Buyer's failure to object to any title exception within the time stated above shall be deemed an approval of the quality of title reflected in the Commitment. Thereafter, any liens, leases, encumbrances, easements, restrictions, conditions, covenants, rights-of-way and other matters affecting title to the Property that are created and which may appear of record or be revealed by survey or otherwise after the date of the Commitment but before the Closing date (collectively, "Intervening Exceptions") shall be subject to Buyer's approval and Buyer shall have ten (10) Working Days after notice in writing of any Intervening Exception, together with a description thereof and a copy of the instrument creating or evidencing the Intervening Exception, if any, to either accept it (whereupon the Intervening Exception shall be a Permitted Exception) or submit written objection and the reasons therefore to Seller.

Seller shall have five (5) Working Days following receipt from Buyer of any notice of objection(s) to notify Buyer in writing of any such objections which Seller does not intend to attempt to eliminate. The failure of Seller to respond in writing within the time stated shall be deemed an agreement by Seller to attempt to remove Buyer's objection(s) by modification or removal of the exception(s) objected to by Buyer. If Seller notifies Buyer that Seller does not intend to eliminate any exception to which Buyer has objected, Buyer shall then have the right, exercisable by providing written notice thereof to Seller within five (5) Working Days of its receipt of written notice from Seller, to either (a) terminate this Agreement, in which event neither party shall have any further right or obligation with regard to the purchase and sale of the **Property/Easement**, or (b) waive its objection to that exception. Seller shall exercise its reasonable efforts to remove by Closing any and all exceptions (other than those it has notified Buyer that it will not attempt to eliminate) to which Buyer has objected. If Seller cannot remove such exception after exercising such reasonable efforts, it shall notify Buyer thereof and Buyer may either go forward and purchase the **Property/Easement** subject to such exception or terminate this Agreement. In the event Buyer so elects to terminate this Agreement, the obligation of Seller to sell, and Buyer to buy, the **Property/Easement** as herein provided shall terminate and the Deposit and the interest accrued thereon shall be returned to Buyer.

4. CONTINGENCIES:

4.1 Buyer's Feasibility Contingency: The sale of the **Property/Easement** to Buyer is contingent on Buyer's inspection and satisfaction with the Property, including without limitation title review and the results of an Environmental Site Assessment, the suitability of the **Property/Easement** for Buyer's intended uses in Buyer's sole and absolute discretion, including without limitation the ability of Cascade to assign this Agreement and the rights, title and interest herein, or a portion thereof, to the City on terms and conditions acceptable to Cascade. Within five (5) Working Days of the Effective Date of this Agreement, Seller shall make available to Cascade for inspection and copying (at Seller's sole expense) copies of reports, maps, plans and studies, to the extent currently in its possession, concerning the Property. Seller hereby grants Buyer's employees, agents and/or contractors and the City and its employees, agents and/or contractors, as Buyer's invitee, a right of entry onto the Property for any site inspections performed in connection with such Environmental Site Assessment. Buyer's inspections may include testing, at Buyer's expense, for the presence or absence of Hazardous Substances (as defined herein) on, under or in the Property. In connection with such inspections, Buyer agrees to hold harmless, indemnify and defend Seller, its officers, agents and employees, from and against all claims, losses, or liability, for injuries, sickness or death of persons, including employees of Buyer, to the extent caused by or arising out of any act, error or omission of Buyer, its officers, agents, contractors, subcontractors and/or employees and the City and its officers, agents, contractors, subcontractors and/or employees, as Buyer's invitee, in entering the Property for the above purposes; provided, however, that in no event shall the Buyer or its invitee be liable, or required to indemnify Seller on account of any pre-existing soil, groundwater or other

environmental contamination on the Property or any other physical condition in, on, over, under or concerning the Property.

4.2 Buyer's Assignment Contingency: The sale of the **Property/Easement** to Buyer is contingent on CLC's assignment of this Agreement and assumption of the Agreement by the City.

4.3 Removal of Buyer's Contingencies: Buyer shall have _____ () Working Days from the Effective Date of this Agreement to remove the feasibility contingency in Section 4.1 (the "Feasibility Contingency Period"); provided, however, that Buyer may extend the Feasibility Contingency Period by an additional _____ () Working Days in the event that its Phase I environmental site assessment recommends Phase II testing on the Property. Buyer shall have _____ () Working Days from the date of removal of Buyer's Feasibility Contingency to remove the assignment contingency in Section 4.2 (the "Assignment Contingency Period"). In the event that Buyer fails to remove by written notice to Seller such feasibility contingency or assignment contingency by the date provided for above, this Agreement shall terminate automatically, and neither party shall have any further rights, obligations or liabilities hereunder.

5. RISK OF LOSS; MAINTENANCE OF REAL PROPERTY: Seller will bear the risk of loss of or damage to the Property prior to Closing. In the event of such loss or damage to the Property, or a portion thereof, Seller shall promptly notify Buyer thereof and Buyer may, in its sole discretion, terminate this Agreement by giving notice of termination to the Seller. Notwithstanding Buyer's right to terminate this Agreement, in the event of loss of or damage to all or a portion of the Property, Buyer may elect to purchase the **Property/Easement** in the condition existing on the date of Closing; provided, however, that unless otherwise agreed, Seller shall not be liable to restore the Property or pay damages to Buyer by reason of such loss or damage.

Seller agrees at all times to continue to maintain the Property in compliance with all applicable laws. Seller shall maintain all casualty, liability and hazard insurance currently in force with respect to the Property through the Closing without diminution in coverage.

6. ASSIGNMENT: Cascade may assign this Agreement and the rights herein, or a portion thereof, to the City. In the event of a complete assignment by Cascade and assumption by the City of all of Cascade's rights and obligations under this Agreement, Cascade shall have no further rights, obligations or liabilities under this Agreement.

7. SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS: Seller represents, warrants and covenants to Buyer as of the Effective Date of this Agreement and again as of the date of Closing that:

7.1 Execution, Delivery and Performance of Agreement, Authority: Seller, and the person(s) signing on behalf of Seller, has full power and authority to execute this

Agreement and perform Seller's obligations, and if Seller is a corporation, all necessary corporate action to authorize this transaction has been taken. Based on Seller's actual knowledge, no approval, consent, order or authorization of or designation, registration or filing (other than for personal purposes) with any governmental authority or other third party is required in connection with the due and valid execution and delivery of this Agreement by Seller to allow compliance with the provisions hereof by Seller and consummation of the transaction contemplated hereby by Seller. Based on Seller's actual knowledge, the execution, delivery and performance of this Agreement and all documents executed by Seller that are to be delivered to Buyer by Closing will not violate any provision of any law, rule, regulation, order, writ, judgment, decree or award to which Seller is a party or which is presently in effect and applicable to Seller. This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with the terms hereof.

7.2 No Actions or Proceedings: Based on Seller's actual knowledge, there is no action, suit, proceeding or investigation pending that would become a cloud on the title to the Property or any portion thereof or that questions the validity or enforceability of the transaction contemplated by this Agreement or any action taken pursuant hereto in any court or by any federal, district, county or municipal department, commission, board, bureau, agency or other governmental instrumentality.

7.3 No Condemnation: Based on Seller's actual knowledge, neither the whole nor any portion of the Property is subject to temporary requisition or use by governmental authority or has been condemned or taken in any proceeding similar to a condemnation proceeding. To Seller's actual knowledge, no such proceeding is contemplated.

7.4 No Notices: Seller has no actual knowledge, nor has Seller received any written notice, of any violations of law, municipal ordinance or other legal requirements of governmental authorities in respect to the Property. Seller authorizes Buyer to make the necessary searches for any such violations. Seller has not received any written notices from any federal, state or municipal authority of any lawsuits or judgments relating to violations of the Property, and Seller will promptly notify Buyer if it receives such notice.

7.5 No Material Defect; No Adverse Changes: Seller has no actual knowledge of any material defect in the Property or adverse change in the physical condition of the Property.

7.6 No Default or Breach: Seller has received no written notice of any default or breach by Seller under any covenants, conditions, restrictions, rights-of-way, easements, insurance policies, service contracts, warranties, guaranties or leases affecting the Property or any portion thereof.

7.7 Taxes and Assessments: Other than the amounts disclosed by the Commitment, to Seller's actual knowledge, no other property taxes have been or will be

assessed against the Property for the current tax year and no general or special assessments or charges have been levied, assessed or imposed on or against all or any part of the Property.

7.8 Environmental Compliance; Contamination: Seller has not intentionally withheld any material information concerning environmental matters with respect to the Property. To Seller's actual knowledge (i) there has been no generation, deposit, manufacturing, refinement, transport, treatment, storage, handling, transfer, disposal, production, processing or release of Hazardous Substances on or under the Property at any time during Seller's ownership or use thereof except as in compliance with then applicable law; and (ii) there are no underground storage tanks on the Property nor have underground storage tanks been removed from the Property. Seller has no actual knowledge that would lead it to believe that there are any Hazardous Substances on or under the Property. Seller will not use, generate, manufacture, produce, store, release, discharge or dispose of on, under, above or about the Property, or transport to or from the Property, any Hazardous Substance or authorize any other person or entity to do so, prior to Closing. Seller has no actual knowledge of any substances or conditions on the Property that may support a claim or cause of action against the owner of the Property, whether by a governmental agency or body, private party or individual, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), the Washington State Model Toxics Control Act, ch. 70.105D Revised Code of Washington ("RCW"), as amended ("MTCA"), or any other federal, state or local environmental statutes, regulations, ordinances or regulatory requirements, or amendments thereto. For purposes of this Agreement, the terms Hazardous Substances shall mean: "hazardous substance" as defined in CERCLA; "hazardous waste" as defined by RCRA; "hazardous substance" as defined in MTCA; hazardous wastes, hazardous materials, hazardous substances, toxic waste, toxic materials, or toxic substances as defined in state or federal statutes or regulations; asbestos-containing materials, polychlorinated biphenyls; radioactive materials, chemicals known to cause cancer or reproductive toxicity; petroleum products, distillates or fractions; any substance the presence of which is prohibited by statute or regulation; and any substance for which any statute or regulation requires a permit or special handling in its use, collection, storage, treatment or disposal.

7.9 Fees and Commissions: Seller shall pay for any broker's or other commissions or fees incurred by Seller in connection with the sale of the Property, and Seller shall indemnify and hold Buyer harmless from all such claims for commissions and/or fees.

7.10 Title: Seller warrants that it has good and sufficient title to the Property, free from all encumbrances done or suffered from Seller except for the lien of real estate taxes and drainage service charges not yet due and payable and the exceptions provided for in the Commitment.

7.11 Agreement to Transfer or Encumber: Seller has not committed nor obligated itself in any manner whatsoever to sell, lease or encumber the Property or any interest therein to any party other than Buyer.

7.12 No Seller Bankruptcy: No bankruptcy, insolvency, rearrangement or similar action involving Seller or the Property, whether voluntary or involuntary, is pending, threatened by a third party, or contemplated by Seller.

In the event that Seller has actual knowledge that any of the representations contained in this Section 7 are untrue as of the date of Closing as a result of information received by Seller or become known at any time prior to Closing by Seller to be untrue, Seller shall promptly notify Buyer in writing and Buyer may elect to terminate this Agreement by written notice to Seller, and all obligations of Seller and Buyer hereunder shall terminate and be of no further force or effect.

8. BUYER'S REPRESENTATIONS AND WARRANTIES:

Buyer represents, warrants and covenants to Seller as of the Effective Date and again as of Closing:

8.1 Organization. Cascade is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of Washington, with the full right, power and authority to take title to the **Property/Easement** and to enter into and otherwise perform and comply with the terms of this Agreement.

8.2 Execution, Delivery and Performance of Agreement, Authority. The execution, delivery and performance of this Agreement by Buyer (i) is within the powers of Buyer as a nonprofit corporation, (ii) has been or will be on or before Closing, duly authorized by all necessary action of Buyer's corporate authority, and (iii) does not and will not violate any provision of any law, rule, regulation, order, writ, judgment, decree or award to which Buyer is a party or which is presently in effect and applicable to Buyer. This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with the terms hereof.

8.3 Broker. No broker, finder, agent or similar intermediary has acted for or on behalf of Buyer in connection with this Agreement or the transactions contemplated hereby, and no broker, finder, agent, or similar intermediary is entitled to any broker's, finder's or similar fee or commission in connection with this Agreement based on any agreement, arrangement, or understanding with Buyer or any action taken by Buyer. Buyer shall pay for any broker's or other commissions or fees incurred by Buyer in connection with the sale of the Property, and shall indemnify and hold Seller harmless from all such claims for commissions and/or fees.

8.4 No Buyer Bankruptcy: No bankruptcy, insolvency, rearrangement or similar action involving Buyer, whether voluntary or involuntary, is pending or contemplated by Buyer or, to the best knowledge of Buyer, is threatened by a third party,.

In the event that Cascade assigns this Agreement and the rights herein, or a portion thereof, to the City and the City accepts such assignment, the City shall be deemed to make the representations, warranties and covenants in Sections 8.1 through 8.4, except that such representations, warranties and covenants shall recognize that the City is a municipal corporation and not a nonprofit corporation, that the City has legislative and not corporate authority, that the City is assuming rather than executing this Agreement, and that the City makes such representations, warranties and covenants as of the date of assignment and Closing and not as of the Effective Date.

9. INDEMNIFICATION:

9.1 Seller's Indemnification: Seller agrees to indemnify, defend, and hold harmless Buyer, its employees, agents, heirs, successors and assigns, from and against any and all damage, claim, liability, or loss, including reasonable attorney's and other fees arising out of or in any way connected to the following: (a) the breach of any representation, warranty or agreement of Seller set forth in this Agreement, including without limitation the environmental representations and warranties contained in Section 7.8; and (b) any injuries to persons or property from any cause other than the negligence of Buyer occasioned in whole or in part by any acts or omissions of the Seller, its representatives, employees, contractors or suppliers that occurred before Closing. Such duty of indemnification shall include, but not be limited to damage, liability, or loss pursuant to all federal environmental laws, Washington State environmental laws, strict liability and common law. The indemnity in this Section 9.1 shall survive Closing.

9.2 Buyer's Indemnification: Buyer agrees to indemnify, defend, and hold harmless Seller, its employees, agents, heirs, successors and assigns, from and against any and all damage, claim, liability, or loss, including reasonable attorney's and other fees arising out of or in any way connected to: (a) the breach of any representation or warranty severally made by Buyer and contained herein; and (b) to the extent allowed by law, any injuries to persons or property from any cause other than the negligence of Seller occasioned in whole or in part by any acts or omissions of the Buyer, its representatives, employees, contractors or suppliers that occurred after Closing. The indemnity in this Section 9.2 shall survive Closing.

10. CLOSING:

10.1 Time for Closing: The Closing will occur not later than within __ (days) of notice of removal of Buyer's assignment contingency in Section 4.2. The Closing shall proceed under escrow instructions of Buyer and Seller. Buyer and Seller shall deposit in escrow with the Closing Agent all instruments, documents and moneys necessary to complete the sale in accordance with this Agreement. As used in this Agreement, "Closing" and "date of Closing" means the date on which all appropriate documents are recorded and proceeds of the sale are available for disbursement to Seller. The Closing Agent shall be:

Pacific Northwest Title Insurance Company

10.2 Costs: Seller and Buyer shall each pay their own attorneys' fees. Buyer shall otherwise pay all closing costs, including the real estate transfer excise taxes, escrow fees, title insurance premium and the cost of recording the deed(s).

10.3 Proration of Taxes, Etc. Seller shall be responsible for paying real property taxes, general assessments, compensating taxes, utilities and operating expenses relating to the Property through Closing. Any special assessments against the Property in existence as of the date of Closing shall be paid in full by Seller. All expenses of the Property, including, but not limited to, real property taxes, utility charges, annual permits and other expenses normal to ownership, use, operation and maintenance of the Property shall be prorated as of 12:01 a.m. on the date of Closing.

11. NOTICES: Any notices required herein shall be given to the Parties at the addresses listed below:

TO SELLER:

TO BUYER:

CASCADE LAND CONSERVANCY
615 SECOND AVE
SUITE 625
SEATTLE, WA 98104
ATTN: CHIP NEVINS
TELEPHONE: (206) 292-5907, EXT. 109
FACSIMILE NO.: (206) 292-4765

WITH A COPY TO:

WITH A COPY TO:
PRESTON GATES & ELLIS LLP
925 FOURTH AVENUE, SUITE 2900
SEATTLE, WASHINGTON 98104
ATTN: KONRAD J. LIEGEL
TELEPHONE: (206) 370-8385
FACSIMILE NO.: (206) 623-7022

AND, UPON ASSUMPTION OF THIS
AGREEMENT BY THE CITY, TO:

CITY OF SEATTLE
SEATTLE PUBLIC UTILITIES
700 FIFTH AVENUE, SUITE 4900
P.O. BOX 34018
SEATTLE, WASHINGTON 98124-4018
ATTN: CYNDY HOLTZ

TELEPHONE: (206) 386-1990
FACSIMILE NO.: (206) 684-0206

WITH A COPY TO:

CITY OF SEATTLE
SEATTLE PUBLIC UTILITIES
REAL PROPERTY SERVICES
P.O. BOX 30418
SEATTLE, WASHINGTON 98124-4018
ATTN: TERI HALLAUER

For Hand Delivery:

CITY OF SEATTLE
SEATTLE PUBLIC UTILITIES
810 THIRD AVENUE, SUITE 300
SEATTLE, WASHINGTON 98104
CITY OF SEATTLE
SEATTLE PUBLIC UTILITIES
ATTN: TERI HALLAUER
TELEPHONE: (206) 684-5971
FACSIMILE NO.: (206) 615-1215

Any party hereto may, by proper written notice to the other, designate such other address, or facsimile telephone number for the giving of notices as deemed necessary. All notices shall be deemed given on the day each such notice is personally delivered, transmitted by telecopy (with evidence of receipt), or delivered by overnight courier service, or on the third day following the day such notice is mailed if mailed in accordance with this Section.

12. DEFAULT; REMEDIES:

12.1 Specific Performance: This Agreement pertains to the conveyance of real property, the unique nature of which is hereby acknowledged by the Parties. Consequently, if Seller breaches or defaults under this Agreement or any of the representations, warranties, terms, covenants, conditions or provisions hereof, Buyer shall have, in addition to a claim for damages for such breach or default, and in addition and without prejudice to any other right or remedy available under this Agreement or at law or in equity, the right (a) to specific performance of this Agreement, or (b) to terminate this Agreement upon written notice without liability to Seller or Buyer.

12.2 Attorneys Fees: If any party brings an action or other proceeding against any other party to enforce any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement, or by reason of any breach or default hereunder or thereunder, the party prevailing in any such action or proceeding shall be paid all costs and reasonable attorney's fees by the other party, and in the event any judgment is obtained by the prevailing party all such costs and attorney's fees shall be included in the judgment.

13. **GENERAL:** This Agreement and its attached Appendices are the entire agreement of the Buyer and Seller with respect to the Property and supersede all prior or contemporaneous agreements between them, written or oral. This Agreement may be modified only in writing, signed by Buyer and Seller. Any waivers under this Agreement must be in writing. A waiver of any right or remedy in the event of a default will not constitute a waiver of such right or remedy in the event of any subsequent default. This Agreement is for the benefit of, and binding upon, Buyer and Seller and their heirs, personal representatives, successors and assigns. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision. The laws of the State of Washington shall govern this Agreement and all documents relating hereto. Time is of the essence in this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument. As used in this Agreement, "actual knowledge" of Seller means the actual knowledge, without additional inquiry, of those persons in the Seller's Law Department and Seattle Public Utilities who have participated in this transaction.

14. **WASTE; ALTERATION OF PROPERTY:** Seller shall not, prior to Closing, commit waste on the Property, nor shall Seller remove trees or other vegetation, coal, minerals or other valuable materials nor shall Seller substantially alter the surface or subsurface of the Property without the express written consent of Buyer.

15. **SURVIVAL OF WARRANTIES AND INDEMNITIES:** The terms, covenants, representations, warranties and indemnities contained herein shall not merge in the deed of conveyance, but shall survive for ten (10) years following Closing.

16. **TAX DEFERRED EXCHANGE:** Seller may elect to close this transaction as a part of a tax-deferred exchange under Section 1031 of the Internal Revenue Code, in which case Buyer agrees to sign all documents necessary for such exchange, and otherwise cooperate therewith, provided only that Buyer shall not be required to incur any additional expense or liability or acquire title to any property.

17. **RECITALS AND APPENDICES:** All recitals and Appendices to this Agreement are incorporated herein by this reference.

18. **EFFECTIVE DATE:** This Agreement is effective as of _____, 200__ (the "Effective Date").

APPENDICES: Appendix A, Legal Description of the Real Property
Appendix B, Earnest Money Note
[Appendix C, Conservation Easement]

Signed in duplicate original.

BUYER: Cascade Land Conservancy, a
Washington nonprofit corporation

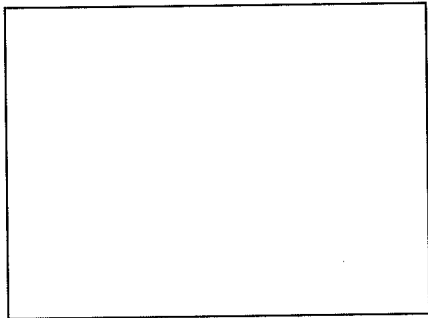
SELLER:

BY: _____
TITLE: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the _____ to be the free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____.



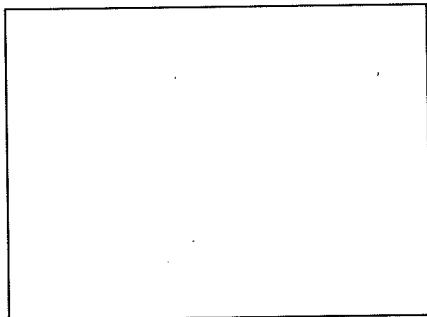
(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

STATE OF WASHINGTON)
) ss:
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the _____ to be the free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____.



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

APPENDIX A

LEGAL DESCRIPTION OF THE PROPERTY

APPENDIX B

EARNEST MONEY NOTE

\$_____.00
_____, 200_

FOR VALUE RECEIVED, CASCADE LAND CONSERVANCY, a Washington nonprofit corporation ("Maker") hereby promises to pay to the order of _____, _____ ("Payee"), c/o _____ Title Insurance Company, _____, _____, WA _____, the principal sum of _____ and No/100 Dollars (\$_____.00). This Note shall be payable in accordance with the terms of that certain Purchase and Sale Agreement ("Agreement") of even date herewith between Maker as buyer and Payee as seller.

If this Note is not paid when due, such failure shall constitute a default hereunder and, at the option of Payee, without prior notice, the entire indebtedness hereby represented shall immediately become due and payable and bear interest at the rate of fifteen percent (15%) per annum until this Note is fully paid.

If suit is brought on this Note, or if it is placed in the hands of an attorney for collection, after any default, Maker promises to pay reasonable costs of collection, including attorneys' fees incurred thereby.

Maker and all endorsers waive demand, presentment and protest and waive notice of demand, protest, dishonor and nonpayment. This Note shall be governed by Washington law.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

CASCADE LAND CONSERVANCY,
a Washington nonprofit corporation

By: _____
Name: _____
Title: _____

**[APPENDIX C
CONSERVATION EASEMENT]**

**EXHIBIT E TO AGREEMENT FOR ACQUISITION AND MANAGEMENT
OF FISH HABITAT**

FORM OF NOTICE OF FEASIBILITY
Fish Habitat Land Acquisition Program

NOTICE OF FEASIBILITY

Cascade Land Conservancy ("CLC") hereby notifies **Seattle Public Utilities** of CLC's intent to remove feasibility in a purchase and sale agreement to acquire the following:

Parcel #: _____

Feasibility Contingency Period ends on: _____

Date of anticipated closing is: _____

DATE REQUIRED FOR SPU'S RESPONSE: _____

The following items are attached/included for your review/records:

- ☐ Executed Purchase and Sale Agreement
- ☐ Appraisal
- ☐ Environmental Assessment
- ☐ Title Commitment and Review Summary/Recommendations

The following steps have been completed:

- ☐ Appraisal – Date: _____; Value: _____
- ☐ Offer made
City approval required and provided on _____
- ☐ City approved the Purchase and Sale Agreement on _____
Date of executed Purchase and Sale Agreement: _____
- ☐ Title Review – Date: _____
- ☐ Site Inspection for Environmental Assessment – Date: _____

- ☐ Phase 1 Environmental Assessment was completed on _____
- ☐ The Property was found to be free from hazards for purposes of transfer
- ☐ The City directed CLC to proceed with a Phase 2 Environmental Assessment
- ☐ Phase 2 Assessment showed no remediation necessary
- ☐ The following remediation activities were conducted:
- _____

CLC recommends removal of the Feasibility Contingency as follows:

Comments:

Prepared by:

Dated this _____ day of _____, 20____.

**EXHIBIT F TO AGREEMENT FOR ACQUISITION AND MANAGEMENT
OF FISH HABITAT**

FORM OF NOTICE OF ASSIGNMENT

Fish Habitat Land Acquisition Program

NOTICE OF ASSIGNMENT

Cascade Land Conservancy ("CLC") hereby notifies Seattle Public Utilities ("SPU") of CLC's intent to assign to the City of Seattle CLC's interest in a purchase and sale agreement to acquire [fee ownership of] [a conservation easement in] the following property:

Parcel #: _____

Anticipated date of closing is: _____

DATE REQUIRED FOR SPU'S RESPONSE: _____

The following items are attached/included for your review:

- ☐ Final Assignment of Purchase and Sale Agreement for execution
- ☐ Final Deed
- ☐ Final City Conservation Easement for execution (if appropriate)
- ☐ Final Landowner Conservation Easement for execution (if appropriate)
- ☐ Final City Stewardship Assignment for execution (if appropriate)
- ☐ Escrow Instructions
- ☐ Preliminary Escrow Settlement Statement
- ☐ Present Conditions Report, including any recommended Immediate Property Management Actions and their anticipated Costs and Expenses

The following steps have been completed:

- ☐ By approving the Notice of Feasibility, the City provided written authorization for CLC to remove the Feasibility Contingency- Date: _____
- ☐ Feasibility Contingency lifted - Date: _____

CLC requests approval of the Assignment and that \$ _____ (Purchase Price of \$ _____ (minus Earnest Money Deposit), Closing Costs of \$ _____, and Assignment Fee [consisting of Earnest Money Deposit of \$ _____, CLC Out-of-

Pocket Costs of \$ _____), and CLC Administration Costs of \$ _____)], be deposited by SPU into Escrow at:

(address shown on Settlement Statement) by: _____, 200_.

CLC has attached an invoice containing documentation in support of the Assignment Fee.

Comments:

[CLC desires to pay the CLC Portion of \$ _____ to acquire a perpetual conservation-stewardship easement in the above-described property. If SPU accepts the Assignment, CLC shall deposit the CLC Portion into Escrow by _____, 200_.]

[Other]

Prepared by: _____
Cascade Land Conservancy

Date: _____, 20__

SPU approves the Assignment and other documents included with this Notice of Assignment. SPU. SPU shall make the requested deposit into Escrow. [SPU [approves] [does not approve] the post-closing immediate property management measures described in the Present Conditions Report [and] [or] the request for payment of costs in such Report.]

Seattle Public Utilities

Name: _____

Title: _____

Date: _____

**EXHIBIT G TO AGREEMENT FOR ACQUISITION AND MANAGEMENT
OF FISH HABITAT**

FORM OF ASSIGNMENT OF REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS ASSIGNMENT OF REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Assignment") is entered into by and between CASCADE LAND CONSERVANCY, a Washington nonprofit company ("Assignor") and the CITY OF SEATTLE, a municipal corporation of the State of Washington acting by and through Seattle Public Utilities("Assignee") (collectively, the "Parties").

RECITALS

A. Assignor is the Buyer under that certain Real Estate Purchase and Sale Agreement ("Purchase Agreement"), dated _____, 200__, for the purchase and sale of certain real property located in King County, Washington, as legally described therein (the "Property"), which Agreement is attached hereto as Appendix "A".

B. In accordance with the Agreement for Acquisition and Management of Fish Habitat, dated as of _____, 2005 between Assignor and Assignee ("Fish Habitat Agreement"), Assignor desires to assign all of its right, title and interest in the Purchase Agreement to Assignee.

AGREEMENT

NOW, THEREFORE, intending to be legally bound and for good and valuable consideration, including the mutual covenants and promises of the parties, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

1. Assignment

1.1 In accordance with the Fish Habitat Agreement, Assignor hereby assigns all of its right, title and interest in the Purchase Agreement to Assignee in consideration of the following:

1.1.1 An assignment fee of \$_____, consisting of CLC Out-of-Pocket Costs, CLC Administrative Costs and the Earnest Money Deposit, each as defined in the Fish Habitat Agreement (collectively, the "Assignment Fee") to be paid to Assignor at closing on the [Property] [conservation easement over the Property];

1.1.2 A [term conservation-stewardship easement] [perpetual conservation-stewardship easement] [stewardship assignment], substantially in the form attached to this Assignment as "Appendix B" to be conveyed to Assignor at closing on the [Property] [conservation easement on the Property]; [provided, that in accordance with the Fish Habitat Agreement Assignee has deposited into escrow \$_____, representing the CLC Portion, as defined in said Agreement, for payment to Assignor at closing;] and

1.1.3 Subject to provisions of the Fish Habitat Agreement and the easement or assignment, the form of which is attached as "Appendix B", an annual stewardship fee of Three Thousand and No/100 Dollars (\$3,000.00) (in 2005 dollars), provided that in no event shall such annual payment be required after December 31, 2050.

1.2 Assignee hereby assumes all of the obligations of Assignor under the Purchase Agreement; Assignee represents and warrants as set forth in Section 8 of the Purchase Agreement in accordance with the last paragraph of that Section.

2. Assignee's address for notices under Section 11 of the Purchase Agreement is:

City of Seattle

Seattle Public Utilities

If by U.S. Postal Service: P.O. Box 30418
Seattle, Washington 98124-4018

If by hand delivery: 700 Fifth Avenue, Suite 4900
Seattle, Washington 98124-4018

Attn: Cyndy Holtz

Telephone No.: (206) 386-1990

Facsimile No.: (206) 684-0206

With a copy to:

City of Seattle

Seattle Public Utilities

Real Property Services

If by U.S. Postal Service: P.O. Box 30418
Seattle, Washington 98124-4018

If by hand delivery: 810 Third Avenue, Suite 300
Seattle, Washington 98104

Attn: Teri Hallauer

Telephone No.: (206) 684-5971

Facsimile No.: (206) 615-1215

3. Representations and Warranties

Assignor and Assignee each represent and warrant, as of the effective date of this Assignment that it (a) has all requisite authority necessary to enter into this Assignment and to complete the transactions contemplated herein, (b) has duly authorized and executed this Assignment, (c) the person signing below has the requisite authority to bind the party on whose behalf he or she is signing, and (iv) assuming due authorization and execution by the other party hereto, this Assignment is a legal, valid and binding obligation of the party executing this Assignment, enforceable in accordance with its terms.

4. General Terms

4.1 Survival. The covenants, agreements, representations, and warranties made in this Assignment shall survive the closing under the Agreement.

4.2 Entire Agreement. This Assignment contains the entire integrated agreement of the Parties, including all of the covenants and conditions between the parties, with respect to the subject matter of this Assignment, other than those contained in the Fish Habitat Agreement, and supersedes all prior correspondence, agreements, and understandings, both oral and written. In the event of conflict between the terms of this Assignment and the Fish Habitat Agreement, the terms of the Fish Habitat Agreement shall control.

4.3 Modification. This Assignment may be modified only by mutual agreement in writing.

4.4 Default. In the event of default under this Assignment by a party to this Assignment, the other party to this Assignment shall be entitled, in addition to all other remedies, to seek specific performance of the defaulting party's obligations hereunder. In the event of litigation between the Parties arising out of or relating to this Assignment, the prevailing party, in addition to all other rights and remedies, shall be entitled to recover reasonable attorneys' fees, costs and litigation-related expenses from the non-prevailing party.

4.5 Authority. Each undersigned representative of the parties certifies that he or she is fully authorized to enter into the terms and conditions of this Assignment and to legally execute, and bind such party to, this Assignment.

4.6 Captions. The captions of this instrument are solely for the convenience of the parties and are not a part of this Assignment.

4.7 Applicable Law. This Assignment shall be governed by the laws of the State of Washington.

4.8 Counterparts. This Assignment may be executed in any number of counterparts, or by facsimile copies, any one of which shall be deemed an original and all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Assignment by signing any such counterpart.

4.9 Recitals. Each recital, appendix and schedule set forth above is fully incorporated into this Assignment.

4.10 Effective Date. The effective date of this Assignment shall be the earliest date by which both Assignor and Assignee have executed this instrument.

5. Post-Closing Immediate Property Management Costs

Assignor agrees to undertake the post-closing management measures on the Property described in "Schedule 1" attached to this Assignment in accordance with the budget and schedule described in "Schedule 1" ("Immediate Property Management Action"). Assignor shall be paid for its costs associated with undertaking the Immediate Property Management Action ("Immediate Property Management Action Costs") as provided for in Section 4.B of the Fish Habitat Agreement.]

Agreed to and accepted this ____ day of _____, 200_.

Assignor:

CASCADE LAND CONSERVANCY,
a Washington nonprofit corporation

By _____
Name _____
Its _____

Assignee:

THE CITY OF SEATTLE
Seattle Public Utilities

By _____
Name _____
Its _____

APPENDIX A

REAL ESTATE PURCHASE AND SALE AGREEMENT

APPENDIX B

[CONSERVATION EASEMENT] [STEWARDSHIP ASSIGNMENT]

ATTACHMENT 1 TO ORDINANCE

AGREEMENT FOR ACQUISITION AND MANAGEMENT OF FISH HABITAT

This Agreement for Acquisition and Management of Fish Habitat (the "Agreement") is entered into as of the ____ day of ____, 2005, by and between The City of Seattle, a municipal corporation of the State of Washington, acting by and through Seattle Public Utilities (the "City"), and Cascade Land Conservancy, a Washington nonprofit corporation ("CLC"). The City or CLC may be referred to herein as a "Party" and both as the "Parties."

Recitals

A. As a party to the Cedar River Watershed Habitat Conservation Plan dated April 21, 2000, as may be amended or supplemented from time to time ("HCP"), the City has made a commitment to contribute specified amounts of money to acquire, restore, enhance and/or protect high quality spawning, rearing or refuge habitat for anadromous fish species, and the natural features and processes sustaining such habitat, along the mainstem of the lower Cedar River below Landsburg Dam ("Fish Habitat") until the expiration of the HCP on December 31, 2050.

B. The City has identified properties that meet the requirements and objectives of the HCP. These properties are listed in **Exhibit A** hereto.

C. CLC's charitable mission is to protect our region's wild and open space lands to sustain the natural beauty and health of the environment, now and for generations to come.

D. CLC desires to assist the City in protecting Fish Habitat by acquiring, managing and protecting properties from the list in **Exhibit A**, as it may be amended from time to time (the "Program"). The Program is consistent with and supports CLC's mission.

E. In accordance with its mission, CLC desires to permanently preserve the Fish Habitat on properties acquired by the City in fee simple under the Program. To accomplish perpetual preservation, CLC would pay the difference between the present value of each such property subject to a perpetual conservation-stewardship easement and the present value of each such property subject to a conservation-stewardship easement terminating on December 31, 2050 (as further described in Section 2.G(iii), the "CLC Portion").

Now, therefore, in consideration of the mutual promises contained herein, the Parties agree as follows:



Agreement

Section 1. Effective Date and Termination

This Agreement shall be in full force and effect beginning on the date provided above ("Effective Date") and shall expire upon written notice from the City to CLC that the acquisition phase of the Program has ended in accordance with section 2. Either Party may terminate this Agreement upon thirty (30) days written notice to the other Party; provided, that all obligations incurred prior to the date of termination shall survive until fulfilled. In the event of such termination by CLC, any then-existing City Conservation Easements or City Stewardship Assignments (each as hereinafter defined) shall terminate automatically, regardless of whether CLC has paid the CLC Portion. In the event of such termination by the City, the City may leave any then-existing City Conservation Easements or City Stewardship Assignments in effect or, in the City's sole discretion, require their termination. For City Stewardship Assignments and those City Conservation Easements for which CLC has not paid the CLC Portion, termination shall be effective upon notice from the City. For City Conservation Easements for which the CLC Portion has been paid, termination shall be effective upon the City's reimbursement of the CLC Portion with interest at the rate of 4.5% per annum. Upon request, CLC shall execute such documents as the City reasonably requests to evidence termination of City Conservation Easements or City Stewardship Assignments, and the City may record such documents. Notwithstanding the foregoing, City Conservation Easements and City Stewardship Assignments may be terminated by the City for cause in accordance with the terms of such instruments.

Section 2. Property Acquisition Projects

A. The acquisition phase of the Program shall begin on the Effective Date and shall end on the earlier of the date on which the City has expended \$3,000,000 in Acquisition Costs (as defined in Section 3.B) for Acquisition Projects (as defined in Section 2.F) or July 31, 2007; provided that such dollar amount may be increased and/or such date extended or thereafter at the written request of the City. During this time, CLC shall seek to acquire interests in land only from among those properties listed in **Exhibit A** or, with the prior written approval of the City, CLC may acquire interests in other parcels that contain Fish Habitat and are contiguous with parcels in **Exhibit A** that previously have been acquired under this Agreement (each, a "Potential Property" and collectively the "Potential Properties"). CLC agrees to make diligent efforts to acquire the Potential Properties from willing landowners in the time and manner contemplated by this Agreement. CLC agrees to subcontract the acquisition of half the Acquisition Projects (as defined in Section 2.F) to Open Space Resources of Langley, Washington ("OSR") in accordance with Section 2.G(i). CLC and OSR shall responsibly coordinate the management of the Acquisition Projects; provided, that all agreements pertaining to the Acquisition Project shall be executed by CLC and all third-party costs shall be billed to CLC. CLC shall bill the City for OSR's work, plus a 7.5%



administrative fee and the cost of preparation of the Present Conditions Report (as hereinafter defined), all in accordance with Section 3 and/or 4, as applicable. With respect to Acquisition Projects managed by OSR, CLC shall not charge the City for any CLC Administrative Costs (as hereinafter defined) other than the 7.5% fee and the cost of the Present Conditions Report.

B. The Parties shall confer on a quarterly basis, or more frequently as needed, to identify, from within the list of Potential Properties, those properties to be given priority in the acquisition process (each a "Priority Property" and collectively the "Priority Properties"). After each such consultation, CLC shall prepare a list of such Priority Properties, identifying which Priority Property acquisitions will be managed by CLC and which will be managed by OSR, and indicating any priority ranking within such Priority Properties. The City shall provide written approval of the then-current list of such Priority Properties. Once the acquisition process has begun, CLC will conduct weekly telephone briefings and bi-monthly in-person meetings with OSR and City staff managing the Program throughout the acquisition phase. During these briefings and meetings, CLC will provide the City with information about active projects, including parcel number, location, progress on negotiations with landowners, title report findings and related issues needing to be resolved, appraisal findings, and any other information relevant to the current land acquisition projects. In the event that two Priority Properties with different priority rankings are both available, and funds are limited, the Priority Property with the higher ranking will take precedence.

C. The Parties agree that, in most instances, the City's habitat protection goals under the HCP can be accomplished most efficiently and economically as follows: (i) CLC enters into a purchase and sale agreement to acquire fee ownership of a Priority Property; (ii) CLC assigns its interests in the purchase and sale agreement to the City prior to closing (as set forth in Exhibit G, the "PSA Assignment"); (iii) the City closes on acquisition of the Priority Property ("Acquired Property"); (iv) the City conveys to CLC at closing a non-exclusive term conservation-stewardship easement, expiring on December 31, 2050, over the Acquired Property that provides for management and preservation, and potential enhancement and restoration, of Fish Habitat on the Acquired Property; and (v) CLC manages the Acquired Property in accordance with the terms of such easement; provided, that if CLC pays the CLC Portion applicable to a particular Acquired Property, the City shall convey to CLC at closing a non-exclusive perpetual (rather than term) conservation-stewardship easement subject to the termination provisions therein. The general form of the conservation-stewardship easement is shown in **Exhibit B** (the "City Conservation Easement"). The Parties may also enter into a separate property-specific enhancement and/or restoration agreement for any Acquired Property that provides for CLC's active enhancement and/or restoration of Fish Habitat on the Acquired Property.

D. Alternatively, when the owner of a Priority Property does not wish to convey fee title, the Parties may proceed as follows: (i) CLC enters into a purchase and sale agreement to acquire a permanent conservation easement over a Priority Property that



specifies the permissible and impermissible uses of such property, including potential habitat enhancement or restoration, and provides for enforcement rights with respect to protection of Fish Habitat; (ii) CLC assigns its interest in the purchase and sale agreement to the City prior to closing pursuant to the PSA Assignment; (iii) the City closes on acquisition of the conservation easement over the Priority Property ("Acquired Easement Property"); (iv) the City assigns to CLC at closing specified stewardship responsibilities, as well as any habitat enhancement or restoration rights that may be appropriate under the conservation easement for the Acquired Easement Property through a stewardship assignment that continues in effect for so long as the City holds the conservation easement, subject to the termination provisions therein; and (v) CLC manages the Acquired Easement Property as provided in the stewardship assignment. The general form of such easement and assignment is shown in **Exhibit C** hereto and referred to as a "Landowner Conservation Easement" and "City Stewardship Assignment." CLC may make material changes to the form Landowner Conservation Easement and City Stewardship Assignment for a given Priority Property only upon the prior written approval of the City. The Parties may also enter into a separate property-specific enhancement and/or restoration agreement for any Acquired Easement Property that provides for CLC's active enhancement and/or restoration of Fish Habitat on the Acquired Easement Property. Except as noted herein, the property acquisition, funding and closing procedures outlined in Sections 2 through 4 of this Agreement are the same regardless of whether fee title or a Landowner Conservation Easement is being acquired.

E. CLC shall enter into a purchase and sale agreement to acquire each Priority Property in fee simple, except where the Parties determine in consultation to acquire a Landowner Conservation Easement and the City provides written direction to do so. The form of purchase agreement for acquisition of either fee title or a Landowner Conservation Easement is shown in **Exhibit D** hereto and referred to as a "Purchase and Sale Agreement." CLC may make material changes to the form Purchase and Sale Agreement for a given Priority Property upon prior written approval of the City.

F. Whether or not CLC is successful in acquiring a Priority Property, the process that commences with an owner's expression of interest in selling an interest in its Priority Property to CLC and ends (if acquired) with the City's receipt of title or a Landowner Conservation Easement, as appropriate, and CLC's receipt of a City Conservation Easement or City Stewardship Assignment, as appropriate, is referred to herein as an "Acquisition Project." If a Priority Property is not acquired, an Acquisition Project ends when CLC sends written notice to the City that the Priority Property cannot be acquired or the City sends CLC written notice that the City declines to proceed with that acquisition. If the City, through the process outlined below, declines to proceed with acquisition of a Priority Property, CLC may proceed, at its sole expense and on its own behalf and not on behalf of the parties, with acquisition of that Priority Property.



G. For each Acquisition Project, the sequence and schedule of activities, each of which must be completed before the next is undertaken, shall be as follows:

i) Within 15 working days after the Effective Date, CLC shall send a letter of introduction to the owner of each Priority Property and follow up with a personal contact to see if the owner is interested in pursuing a possible sale of an interest in its Priority Property to CLC. For each owner that does not respond within 10 days to the letter of introduction, CLC shall promptly send a second letter. As CLC receives expressions of landowner interest, CLC shall allocate half the Acquisition Projects to OSR; provided, with the prior written consent of the City, such allocation may be changed.

ii) CLC shall enter into a Letter of Intent with a willing landowner.

iii) Using an MAI appraiser approved by the City, CLC shall obtain an appraisal establishing the fair market value of the fee or Landowner Conservation Easement interest in the Priority Property, as appropriate, assuming highest and best use. If the Letter of Intent contemplates sale of the property in fee simple, the appraisal shall determine the difference between (a) the present value of the property subject to a perpetual easement to protect Fish Habitat and (b) the present value of such property subject to an easement to protect Fish Habitat terminating on December 31, 2050. In determining the values described in clauses (a) and (b) above, the appraiser shall use a discount rate of 4.5%. The difference between the two present values shall be the CLC Portion, which shall be paid by CLC at the closing of the acquisition of the Priority Property, if CLC desires to obtain a perpetual, rather than term, City Conservation Easement.

iv) CLC shall make an offer, provided that CLC shall obtain the written approval of the City before making an offer (a) if the appraised value is more than Two Hundred Fifty Thousand Dollars (\$250,000) or (b) if the Priority Property contains a structure, building, paved road, or formally approved trail.

v) CLC shall negotiate a Purchase and Sale Agreement. Before entering into the negotiated Purchase and Sale Agreement, CLC shall, within 5 working days of negotiating the Purchase and Sale Agreement, provide the City with a copy of the proposed Purchase and Sale Agreement for its approval.

vi) Within 5 working days of receiving the proposed Purchase and Sale Agreement from CLC, the City shall send, by electronic mail its approval or disapproval of the Purchase and Sale Agreement to CLC.

vii) Within 30 working days of the effective date of the Purchase and Sale Agreement, CLC shall commission and review a property title report and Environmental Assessment(s) with companies approved by the City, shall complete such other due diligence



tasks necessary to decide whether or not to remove Buyer's Feasibility Contingency under the Purchase and Sale Agreement, and provide written notice to the City, in the form of **Exhibit E** hereto, containing CLC's conclusions with respect to due diligence tasks, the Environmental Assessment, title report and other documents developed or obtained by CLC, and CLC's recommendation on whether or not to proceed with acquisition of the Priority Property ("Notice of Feasibility").

For any Acquisition Project in which the Phase 1 Environmental Assessment recommends a Phase 2 Assessment, CLC shall, within five (5) working days of receipt of the Phase 1 Assessment, make a recommendation to the City regarding whether to continue with the Acquisition Project and complete a Phase 2 Assessment, or terminate the Acquisition Project. The City shall, within five (5) working days of receiving CLC's recommendation, provide written direction to CLC whether to proceed with or terminate the Acquisition Project; provided, that, for Acquisition Projects where CLC recommends proceeding with the Acquisition Project, the City shall be deemed to have approved proceeding with the Acquisition Project unless the City, in writing, disapproves or provides conditions within the time period established by this section. If the City directs CLC to proceed with the Acquisition Project, and if necessary under the Purchase and Sale Agreement, CLC shall make a diligent effort to extend the Buyer's Feasibility Contingency period under the Purchase and Sale Agreement in order to conduct a Phase 2 Environmental Assessment. As used in this Agreement, "Environmental Assessment" means, collectively, an evaluation commonly known as and consistent with federal guidelines regarding "Phase 1 Environmental Site Assessments" and, if so indicated by the Phase 1 assessment, a "Phase 2 Environmental Site Assessment," as well as any additional environmental evaluation CLC deems necessary.

viii) Within 10 working days of receipt of the Notice of Feasibility and accompanying documents, the City shall approve, disapprove or provide any conditions to removing the Buyer's Feasibility Contingency and proceeding with the Acquisition Project, provided that the City shall be deemed to have approved CLC's removal of Buyer's Feasibility Contingency and proceeding with the Acquisition Project unless the City, in writing, disapproves or provides conditions within the time period established by this section. CLC shall pay into escrow the amount due on the earnest money promissory note upon the removal of Buyer's Feasibility Contingency, in accordance with the Purchase and Sale Agreement.

ix) Within 15 working days of the removal of Buyer's Feasibility Contingency under the Purchase and Sale Agreement, CLC shall prepare the Present Conditions Report (as defined below) and other closing documents listed in **Exhibit F** hereto (the "Notice of Assignment") and provide the Notice of Assignment, and accompanying documents, to the City for review and approval.



x) Within 10 working days of receipt of the Notice of Assignment, and accompanying documents, the City shall, in writing, approve, disapprove or request reasonable modifications to the Present Conditions Report and closing documents.

In the event the City requests modifications to the Present Conditions Report or the draft closing documents, the Parties shall confer and attempt to accommodate such requests within five (5) working days.

xi) No less than 10 working days prior to the date set for closing in the Notice of Assignment, the City and CLC shall execute the PSA Assignment and final closing documents and proceed to closing.

Each Acquisition Project shall be conducted pursuant to all applicable Federal, State and local laws. Notwithstanding any other provision of this Agreement to the contrary, an Acquisition Project shall terminate if the City denies approval when it has been requested pursuant to this subsection H or if the Parties cannot agree on the documents described in clause ix) above.

H. For each Acquisition Project, CLC shall maintain communication with the landowner and shall document all landowner contacts through a contact log.

I. CLC shall deliver to the City on each Acquisition Project, according to the schedule established in Section 2.G above, a report documenting the relevant features, current uses and state of improvement on each Priority Property, including the Fish Habitat ("Present Conditions Report"). The Present Conditions Report shall contain a complete and accurate description of such Priority Property. Each report shall contain the following types of information, subject to modification by agreement of the Parties:

Physical and Natural Site Features (narrative)

- River, riverbanks, floodplain/off-channel habitats, current fish use
- Vegetation types and conditions, topography
- Visible natural processes supporting Fish Habitat (e.g. naturally eroding bank, spring, area of treefall)
- Observed plant and animal species
- Special or unique features (e.g., a notable outcrop, old grove of trees, especially deep pool, rare/unusual species)
- Existing structures/improvements (e.g., fence, footpath, nearby roads)
- Adjacent land uses/features
- Potential threats to Fish Habitat (e.g. invasive species, likely location of encroachments)
- Potential future land management and restoration actions (e.g. deal with invasive plant species)



Real Estate Information (narrative)

- Legal description
- Existing boundary/survey markers if present
- Assessor's Parcel Number
- Zoning
- Acreage
- Encumbrances/other easements
- Improvements (such as structure, building, paved road or formally approved trail)
- Driving directions

Maps/Figures (graphic)

- Vicinity map
- Schematic site map (showing the most obvious site and real estate features described above)
- Photopoint locations and direction
- Photos of the property from the photopoints
- Photos of specific site features as applicable

Stewardship Activities and Costs (narrative)

- CLC land management activities to be performed for prompt post-closing implementation, associated costs and recommended timeline for same (e.g., demolition of structures, removal of debris) to be required under and reimbursed through the terms of PSA Assignment
- On-going and site-specific land management activities to be performed by CLC (e.g., dealing with specific invasive plant species), which will also be described in detail in the City Conservation Easement or City Stewardship Assignment, as appropriate
- Recommended habitat enhancement or restoration activities, that may be addressed in a separate City-CLC enhancement and/or restoration agreement
- Projected total Stewardship Costs (costs of all long-term land management activities required under the City Conservation Easement or City Stewardship Assignment, as appropriate), under the formula provided in Section 5

K. Each Acquisition Project shall be funded and closed in accordance with Sections 3 and 4 hereof.

Section 3. Funding of Acquisition Projects

A. For each Acquisition Project, whether or not a fee interest or conservation easement in a Priority Property actually is acquired, the City shall pay the total Acquisition Costs (as defined below) actually incurred by CLC for the Acquisition Project, provided, that the City's obligation to pay non-purchase price Acquisition Costs shall be limited in accordance



with the terms of this Agreement and, provided further, that the City's total monetary obligation for all Acquisition Costs (including without limitation Purchase Price) shall not exceed \$3,000,000, unless the City requests the increase of such amount in writing.

B. For each Acquisition Project, "Acquisition Costs" means:

(i) The Purchase Price (as defined in the Purchase and Sale Agreement) for the Acquired Property or Acquired Easement Property, as applicable, which Purchase Price (minus the Earnest Money Deposit already paid by CLC) the City shall pay through escrow to the Seller of the Priority Property;

(ii) "Closing Costs" consisting of the premium on a standard purchaser's policy of title insurance, recording fees, escrow fees and other closing costs (which the City shall pay through escrow in accordance with the terms of the Purchase and Sale Agreement);

(iii) "Assignment Fee" consisting of:

(a) "CLC Out-of-Pocket Costs" consisting of actual out-of-pocket costs for OSR's work, if applicable (not to exceed \$7,500), appraisal (except for costs for determination of the CLC Portion), title search, environmental assessments, reasonable attorneys' fees (not to exceed \$500) and, with prior City approval, other third-party costs related or necessary to an Acquisition Project; and

(b) "CLC Administrative Costs" consisting of CLC staff and overhead costs associated with an Acquisition Project, consisting of (y) 7.5% of OSR's costs and the cost, not to exceed \$3650, for the preparation of the Present Conditions Report or (z) pre-acquisition costs related to landowner follow-up, an initial landowner meeting and site visit and negotiation of contracts for third-party services; negotiation costs related to drafting and entering into a letter of intent, commissioning and reviewing an appraisal, drafting and negotiating a purchase agreement, commissioning and reviewing an environmental site assessment, commissioning and reviewing a title commitment, conducting due diligence, interfacing with the landowner and the City, preparing a Present Conditions Report and closing the transaction. CLC shall prepare the Present Conditions Reports for all acquired properties, including those acquisitions managed by OSR, and

(c) "CLC Earnest Money Deposit" (as defined in the Purchase and Sale Agreement).

C. CLC and the City agree that for each Acquisition Project:

(i) Without prior written approval from the City, the total amount of CLC Out-of-Pocket Costs for a given Acquisition Project for which CLC shall be entitled to reimbursement shall not exceed \$11,000, whether or not the Acquisition Project closes; and

(ii) Without prior written approval from the City, and in accordance with the rate schedule set forth below (as may be reasonably adjusted by the Parties if the acquisition phase extends beyond July 31, 2007), the total amount of CLC Administrative Costs for a given Acquisition Project for which CLC shall be entitled to reimbursement shall not exceed \$12,000, whether the Acquisition Project closes or does not close, without prior approval from the City. Hourly rates charged by CLC for CLC staff time shall be as follows:

Senior Conservation Director:	\$100/hour
Project Manager:	\$ 75/hour
Stewardship Project Manager:	\$ 75/hour
Deputy Director:	\$150/hour
Administrative Assistant:	\$ 50/hour

(iii) For all CLC Administrative Costs and CLC Out-of-Pocket Costs for which CLC seeks reimbursement, CLC shall submit an invoice containing documentation reasonably acceptable to the City. Documentation shall, at the minimum, provide the following detail: staff person(s), hourly rate, and number of hours worked, broken down by individual Acquisition Project; copies of invoices from OSR and associated CLC administrative fee charged; and copies of invoices for out-of-pocket costs charged to CLC.

Notwithstanding any provision of this Agreement to the contrary, the City assumes no obligation for costs related to a Priority Property that are incurred subsequent to the City's written disapproval of an Acquisition Project pursuant to Sections 2.F or 2.G hereof. If CLC decides to acquire a Priority Property after the City has declined to do so, the City shall have no obligation for the purchase price or any costs incurred by CLC with respect to that Priority Property subsequent to the City's written disapproval.

D. CLC and the City agree that for each Acquisition Project that closes, the parties shall make the following payments into escrow: (i) in accordance with the terms of the PSA Assignment and this Agreement, the City shall pay the Acquisition Costs, provided that the component costs have been documented to the reasonable satisfaction of the City and (ii) CLC shall pay the CLC Portion, but only in connection with acquisition of an Acquired Property. In the event that the City disputes any portion of the invoice for such costs, the City shall deliver into escrow the undisputed portion of the invoice, and that Acquisition Project shall proceed to closure.



E. CLC and the City agree that for each Acquisition Project that does not close, CLC Out-of-Pocket Costs and CLC Administrative Costs shall be paid to CLC as provided for in Section 4.B.

F. The City and CLC recognize that certain Acquisition Projects may include "CLC Immediate Property Management Costs" consisting of costs for near term post-closing management actions on the Acquired Properties or Acquired Easement Properties as appropriate (such as demolition of structures, removal of debris and the like). The PSA Assignment for a given Acquisition Project shall address any near term post-closing management actions on the Acquired Property that have been approved by the City and the agreed-upon schedule and associated costs for undertaking the actions. CLC and the City agree that for each Acquisition Project that involves CLC Immediate Property Management Action Costs, such costs shall be paid to CLC as provided for in Section 4.B.

G. The City will pay a portion of the legal costs that CLC has incurred in developing this Agreement, as follows: within thirty (30) days of the Effective Date of this Agreement, the City will pay CLC Twenty-Four Thousand Dollars (\$24,000), representing approximately seventy-five percent of such legal costs through May 31, 2005; provided that on or prior to the Effective Date the City has received reasonable documentation of such costs.

H. CLC shall be responsible for paying all fees, salaries, wages and other benefits of any CLC employee, consultant or subcontractor who is performing services related to in this Agreement. CLC shall cover CLC employees performing work under this Agreement as required by the State of Washington Industrial Insurance Act.

Section 4. Closing; Payment Procedures

A. Escrow Closings. On or before the closing date, the City and CLC each shall deliver the executed documents specified in the Notice of Assignment to the escrow company approved by the City, the City shall wire the Acquisition Costs to the escrow account in accordance with the escrow instructions and CLC shall, if it desires a perpetual City Conservation Easement, wire the CLC Portion to the escrow account in accordance with the escrow instructions.

B. Other Acquisition Costs. All Acquisition Costs that are not paid pursuant to Section 4.A (i.e., Acquisition Costs associated with Acquisition Projects that do not close) and CLC Immediate Property Management Action Costs shall be paid as follows. Once each quarter, together with the quarterly acquisition reports described in Section 6.A below, CLC shall send to the City a notice listing: (i) Acquisition Projects that are no longer being pursued and the reasons therefor, together with an invoice to the City providing detailed documentation of Acquisition Costs for such Acquisition Projects yet unpaid, in each case incurred in accordance with this Agreement, and requesting payment of all such costs that are



within the limits set forth in this Agreement; and (ii) those near term post-closing management actions on Acquired Properties or Acquired Easement Properties that have been completed, together with an invoice to the City providing detailed documentation of CLC Immediate Property Management Action Costs that have been incurred, in each case in accordance with this Agreement, and requesting payment of all such costs that are within the limits set forth in the PSA Assignments for the Acquired Properties or Acquired Easement Properties. The City shall, within thirty (30) days of receipt of an invoice documented to the City's reasonable satisfaction and in accordance with this Agreement, reimburse CLC in accordance with this Section 4.B. In the event that the City disputes any portion of the invoice, the City shall remit the undisputed portion within the time herein specified, with an explanation of the disputed matter.

Section 5. City Conservation Easements, City Stewardship Assignments and Stewardship Costs

A. In accordance with the procedures set forth in Section 2, the City shall either (i) grant and convey to CLC a City Conservation Easement (either perpetual or expiring on December 31, 2050) for each Acquired Property restricting the uses of the Acquired Property to uses that are consistent with preserving and protecting Fish Habitat and requiring specified monitoring and management actions on the Acquired Property, substantially in the form of **Exhibit B** hereto with the property-specific information inserted, and with such other changes as may be agreed to by the Parties, or (ii) deliver to CLC an executed City Stewardship Assignment under a Landowner Conservation Easement for each Acquired Easement Property (continuing in effect for so long as the City holds the Landowner Conservation Easement), authorizing CLC to monitor the City's rights thereunder, and requiring CLC to exercise specified management actions thereunder, substantially in the form of **Exhibit C** hereto with the property-specific information inserted, and with such other changes as may be agreed to by the Parties. CLC and the City shall manage and maintain each Acquired Property and Acquired Easement Property in accordance with the applicable City Conservation Easement or Landowner Conservation Easement and City Stewardship Assignment, as appropriate, and all applicable Federal, State and local laws.

B. CLC and the City agree that the annual cost of monitoring, maintenance and stewardship for each Acquired Property or Acquired Easement Property through December 31, 2050 shall be \$3,000 (in 2005 dollars), prorated for a portion of a year and adjusted for inflation by use of the Consumer Price Index or, when such index is unavailable, by use of recent Consumer Price Indices. Examples of inflation adjustments are shown in **Schedule 1** hereto. No later than December 31 of each year of the term of this Agreement (but in no event later than December 31, 2050), CLC shall send the City an invoice, documented to the City's reasonable satisfaction, for monitoring, maintenance and stewardship of all Acquired Properties and Acquired Easement Properties, and the City shall pay such invoice within 30 days of receipt of such invoice. Beginning January 1, 2051, the City no longer shall pay any portion of the



monitoring, maintenance and stewardship fees specified in this Section 5.B, but for so long as the City owns an Acquired Property or holds a Landowner Conservation Easement on an Acquired Easement Property, CLC shall continue to provide monitoring, maintenance and stewardship of such property in accordance with the City Conservation Easement or the City Stewardship Assignment, as applicable. Notwithstanding the preceding sentence, on and after January 1, 2051, Grantee in its sole discretion may release the City Conservation Easement and terminate the City Stewardship Assignment, thereby terminating Grantee's obligations thereunder, by giving thirty (30) days prior written notice of same to Grantor. In the event of any conflict between the terms of this section 5 and those of the City Conservation Easement or City Stewardship Assignment, the latter documents shall control.

Section 6. Reporting

A. Quarterly Acquisition Reports. Until all Acquisition Projects have terminated, CLC shall report to the City within thirty (30) days of the end of each March, June, September and December. The report shall contain the following information: (i) the status of Acquisition Project activities relating to each Priority Property listed in **Exhibit A** that has not been acquired as of the date of the report, including dates and nature of contacts made with landowners and/or their representatives, and Acquisition Costs incurred to date; (ii) total Acquisition Costs and CLC Immediate Management Actions Costs on all Acquisition Projects completed to date; and (iii) other relevant information requested by the City for the purpose of determining compliance with this Agreement.

B. Final Report. Within ninety (90) days following the earlier of a) expiration of the acquisition phase provided for under Section 2.A hereof or b) termination of this Agreement, CLC shall provide the City with a final report that summarizes the information provided in the quarterly acquisition reports.

C. Land Management Reports. No later than December 31 of each year during the term of this Agreement, CLC shall provide the City with a report, as described in the City Conservation Easements and City Stewardship Assignments, summarizing its activities during the previous year in managing the Acquired Properties and Acquired Easement Properties.

Section 7. Hold Harmless and Indemnification

A. The City assumes no responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of CLC, its employees, contractors or others by reason of this Agreement. CLC shall protect, defend, indemnify and save harmless the City, its officers, agents and employees from any and all claims, cost and liabilities whatsoever occurring or resulting from: (i) CLC's failure to pay any compensation, fees, wages, benefits or taxes and (ii) the supplying to CLC or the City of work, services, materials or supplies by CLC employees or



agents or other contractors or suppliers in connection with or in support of performance of this Agreement.

B. CLC shall protect, defend, indemnify and save harmless the City and its officers, employees, agents and contractors, and their successors and assigns (collectively, the "Indemnified Parties") from and against any and all liabilities, penalties, losses, costs, damages, claims, causes of action, demands or judgments, or awards of damages, including reasonable attorneys' fees, arising out of or in any way connected with a breach of this Agreement by CLC, its officers, agents or employees, negligent action or inaction of CLC, its officers, agents or employees in the acquisition or stewardship of Priority Properties, or their failure to comply with all applicable laws. For purpose of this Agreement only, CLC waives the immunity granted it for industrial insurance claims pursuant to Revised Code of Washington Chapter 51 to the extent necessary to extend its obligations under this section to any claim, demand, or cause of action brought by or on behalf of any employee of CLC, including judgments, awards and costs arising therefrom and including attorney's fees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

Section 8. Representations and Warranties

CLC and the City each represent and warrant, as of the Effective Date and the date of each closing on an Acquired Property or Acquired Easement Property, that it (i) has all requisite authority to enter into this Agreement and to complete the transactions contemplated herein, (ii) has duly authorized and executed this Agreement, (iii) the person signing below has the requisite authority to bind the Party on whose behalf he or she is signing, and (iv) assuming due authorization and execution by the other Party hereto, this Agreement is a legal, valid and binding obligation of the Party executing this Agreement, enforceable in accordance with its terms. CLC shall deliver to the City a legal opinion of Preston Gates & Ellis LLP, reasonably acceptable to the City, concerning the application of certain Washington laws to CLC's activities under this Agreement, which opinion shall be dated as of the Effective Date of this Agreement.

Section 9. Contractual Relationship

The relationship of CLC to the City under this Agreement shall be that of an independent contractor. This Agreement does not authorize CLC to act as the agent or legal representative of the City for any purpose whatsoever. CLC is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever.

Section 10. General Provisions



A. Notices. All notices, approvals, and invoices required in connection with this Agreement shall be in writing and deemed to have been duly given if personally delivered or sent by fax, e-mail, United States mail or overnight delivery service, or as otherwise specified in this Agreement, each with proof of receipt, to the respective representatives of the Parties or their designees, as shown below, or as otherwise indicated in written notice from one Party to the other.

City

CLC

HCP Program Manager

Seattle Public Utilities
700 Fifth Ave., Suite 4900
P.O. Box 34018
Seattle, Washington 98124-4018
Phone: 206-386-1990
Fax: 206-684-0206
E-mail: cyndy.holtz@seattle.gov

Chip Nevins,
King County Senior Conservation Director
Cascade Land Conservancy
615 Second Avenue, Suite 625
Seattle, WA 98104
Phone: (206) 292-5907, Ext. 109
Fax: (206) 292-4765
E-mail chipn@cascadeland.org

B. Publicity. The Parties shall make good faith efforts to coordinate any public relations or publicity efforts undertaken by either Party regarding the cooperative Program outlined in this Agreement. Notwithstanding the foregoing, until the end of the acquisition phase of the Program, CLC shall not publicize the property acquisition program hereunder without the prior written approval of the City.

C. Applicable Law. This Agreement shall be governed by the laws of the State of Washington. Each Party shall cause all work for which it is responsible under this Agreement to be carried out in accordance with all applicable laws and regulations, including without limitation public works laws and laws prohibiting discrimination based on sex, sexual orientation, race, color, national origin, ancestry, creed, religion, political ideology, age, marital status, or the presence of any sensory, mental or physical handicap. Failure to comply with the foregoing shall be a material breach of this Agreement.

D. Entire Agreement; Modification. This Agreement (including recitals, Schedules and Exhibits) is the complete expression of the terms herein, and any oral representations or understandings not incorporated herein are excluded. This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties relating to the Program and constitutes the entire Agreement between the Parties. This Agreement may be modified or amended only by the written agreement of the Parties.



E. Severability. If any provision hereof is held by a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

F. No Waiver. No waiver by either Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provision of this Agreement. No waiver shall be effective unless made in writing.

G. No Third Party Beneficiaries. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

H. Interpretation. All recitals, Schedules and Exhibits hereto are, by this reference, incorporated into this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Agreement. In the event of a conflict between this Agreement and the City Conservation Easement or City Stewardship Assignment, the City Conservation Easement or City Stewardship Assignment, as applicable, shall control. Each Party and its counsel has reviewed and revised this Agreement and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

I. Time is of the Essence. For the purposes of this Agreement and each Party's obligations hereunder, time is of the essence.

J. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors or assigns of each Party. Neither Party may assign its rights or obligations in this Agreement without the prior written consent of the other Party, which consent may be withheld in that Party's sole discretion.

K. Counterparts. This Agreement may be executed in counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

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



CASCADE LAND CONSERVANCY
A Washington Nonprofit Corporation

By:
Its:

THE CITY OF SEATTLE
Seattle Public Utilities

Chuck Clarke
Director



Schedule 1

EXAMPLES SHOWING INFLATION ADJUSTMENTS OF STEWARDSHIP COSTS

1. Property acquired in 2007: initial adjustment from 2005 to 2007 where all indices are known:

$$\frac{\text{Average of Monthly Jan-Dec CPI Indices for 2007}}{\text{Average of Monthly Jan-Dec CPI Indices for 2005}} = \frac{194}{189} = 1.03$$

Adjusting from 2007 to 2008:

$$\frac{\text{Average of Monthly Jan-Dec CPI Indices for 2008}}{\text{Average of Monthly Jan-Dec CPI Indices for 2007}} = \frac{196}{195} = 1.01$$

2. Property acquired in 2008: initial adjustment from 2005 to 2008 where 2008 indices are not known, so the rate of inflation from 2007 to 2008 is estimated by the inflation between 2006 and 2007:

$$\begin{array}{ccc} \frac{\text{Average of Monthly Jan-Dec CPI Indices for 2007}}{\text{Average of Monthly Jan-Dec CPI Indices for 2005}} & \times & \frac{\text{Average of Monthly Jan-Dec CPI Indices for 2007}}{\text{Average of Monthly Jan-Dec CPI Indices for 2006}} \\ \\ \frac{194}{189} & \times & \frac{194}{192} = 1.04 \end{array}$$



EXHIBIT A TO AGREEMENT FOR ACQUISITION AND MANAGEMENT OF FISH HABITAT

POTENTIAL PROPERTY ACQUISITIONS

Parcel	Number	Acres	Assessed Valuation	Priority
Dorre Don Meanders - Priority Site No. 1				
152206	-9102	5.45	\$349,800	2
	-9101	1.90	\$397,320	2
	-9105	5.60	\$191,400	2
	-9025	3.93	\$311,520	1
	-9026	6.43	\$135,960	1
	-9061	0.70	\$47,520	2
	-9007	1.30	\$398,640	3
	-9038	0.35	\$73,920	3
092206	-9028	0.91	\$224,400	3
	-9179	5.28	\$917,400	3
	-9029	6.49	\$195,360	3
162206	-9030	12.00	\$624,360	3
	-9002	6.92	\$518,760	3
	-9071	14.16	\$73,888	3
	Total	71.42	\$4,460,248	
Mouth of Taylor - Priority Site No. 2				
511140	-0150	5.13	\$280,500	1
	-01XX	5.00	\$228,000	1
	-0140	2.07	\$143,750	5
	-0145	1.46	\$240,350	5
	-0146	0.37	\$232,300	5
511240	-0095	4.00	\$90,200	4
	-0085	3.33	\$209,880	4
	-9027	3.14	\$219,120	6
042206	-9030	0.55	\$34,320	6
	-9018	2.64	\$392,040	6
	-9020	2.65	\$68,792	6
	-9021	1.84	\$190,080	6
	-0066	3.14	\$204,700	5
	Total	35.32	\$2,534,032	
Ricardi - Priority Site No. 3				
242305	-9081	13.00	\$147,840	1
	-9029	0.23	\$1,320	1
292306	-9016	0.61	\$204,600	2
	-9035	8.33	\$207,240	2
	-9007	8.21	\$341,880	2
	-9006	12.94	\$96,360	2
	-9081	20.00	\$168,000	2
	-9051	0.46	\$6,000	1
	Total	63.78	\$1,173,240	
Belmondo - Priority Site No. 4				
292306	-9013	5.88	\$303,600	1
	-9019	78.51	\$723,360	1
	-9071	1.10	\$55,440	2
	-9009	36.74	\$129,360	1
	-9008	5.67	\$120,120	1
	-9035	8.33	\$207,240	3
	-9007	8.21	\$341,880	3
	-9006	12.94	\$96,360	3



322306	-9081	20.00	\$168,000	3
	-9005	1.12	\$83,950	2
	-9093	0.41	\$181,700	2
	-9096	0.46	\$33,350	2
	-9042	20.42	\$2,415,000	2
712040	-9071	4.33	\$105,800	2
	-9091	4.91	\$93,150	2
	-0005	0.43	\$161,000	2
	-0010	0.50	\$49,450	2
	-0015	0.64	\$111,550	2
	-0020	0.81	\$113,850	2
	-0030	0.91	\$111,550	2
	-0035	1.58	\$371,450	2
	-0050	0.54	\$181,700	2
	-0055	0.57	\$203,550	2
	Total	215.01	\$6,362,410	

Landsburg - Priority Site No. 5

242206	-9047	26.00	\$378,000	1
	-9052	4.10	\$67,320	2
	-9065	3.21	\$269,280	2
	-9062	4.72	\$151,800	3
	-9110	12.44	\$286,440	3
	-9017	10.60	\$273,240	3
	-9050	2.87	\$36,960	3
	-9012	1.89	\$7,320	4
	-9107	1.15	\$24,000	4
	-9116	0.44	\$24,000	4
	-9121	4.92	\$6,600	4
	-9023	2.04	\$24,000	4
	-9026	6.27	\$520,080	4
	-9080	1.93	\$258,720	4
	-9063	1.52	\$291,720	4
	-9064	2.89	\$234,960	4
	146740	-0160	0.48	\$211,200
Total		87.47	\$3,065,640	

Jones - Priority Site No. 6

357020	-0040	3.51	\$139,920	1
	-0042	2.95	\$71,500	1
	-0005	0.16	\$39,600	2
	-0006	0.76	\$500,400	2
	-0010	1.86	\$353,760	2
192306	-0055	4.11	\$429,000	2
	-9053	5.00	\$215,160	2
	-9034	5.03	\$483,120	2
	-9041	0.38	\$348,480	2
	-0010	1.86	\$353,760	2
	-0006	0.76	\$39,600	2
	-9080	11.90	\$117,000	2
	-9009	35.67	\$445,000	2
	-9023	0.90	\$179,520	2
	-9045	5.66	\$297,000	2
202306	-9042	6.27	\$549,120	2
	-9064	2.31	\$138,600	2
	-9063	3.50	\$174,200	2
	-9010	2.16	\$267,000	2
	-9065	2.16	\$442,200	2
	-9042	11.93	\$561,000	2
	Total	74.85	\$4,561,940	

Lower Lions - Priority Site No. 7

322306	-9056	13.45	\$227,040	1
	-9084	1.70	\$43,560	1
	-9085	1.14	\$19,800	1
	-9022	2.94	\$51,480	2



-9132	0.70	\$25,080	2
-9131	1.32	\$104,280	3
-9074	4.64	\$44,880	3
-9011	5.00	\$154,440	3
-9028	2.30	\$69,960	3
-9017	3.22	\$201,960	3
Total	36.41	\$942,480	

Byers Bend - Priority Site No.8

042206	-9033	6.03	\$361,680	1
	-9025	7.47	\$603,240	1
	-9079	0.89	\$105,600	3
	-9043	0.76	\$105,600	3
	-9023	0.87	\$135,960	3
	-9045	0.84	\$283,800	3
	-9047	0.67	\$87,120	3
	-9066	0.70	\$236,280	3
	-9050	0.71	\$180,840	3
	-9053	0.70	\$278,520	3
	-9051	0.68	\$80,520	3
	-9100	0.13	\$6,600	3
	-9075	0.40	\$18,480	3
332306	-9013	1.56	\$18,480	3
	-9084	6.10	\$372,240	3
	-9068	17.46	\$415,800	2
	-9010	12.30	\$178,200	2
	Total	28.51	\$2,874,960	

Royal Arch Bend - Priority Site No. 9

275220	-0045	18	\$300,000	3
	-0050	18.74	\$575,000	3
	-0075	10.8	\$500,000	3
	-0070	1.08	\$200,000	3
	-0063	0.27	\$200,000	3
	-0060	0.34	\$200,000	3
	-0062	0.53	\$225,000	3
	-0061	0.65	\$200,000	3
	Total	50.41	\$2,400,000	

Total Priority Parcels:	663.18	\$28,374,950
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**EXHIBIT B TO AGREEMENT FOR ACQUISITION AND MANAGEMENT
OF FISH HABITAT**

**FORM OF CONSERVATION-STEWARDSHIP EASEMENT
FROM CITY TO CLC**

When Recorded Mail To:

Cascade Land Conservancy
615 Second Avenue, Suite 625
Seattle, WA 98104
Attn: Chip Nevins

DEED OF CONSERVATION-STEWARDSHIP EASEMENT

Grantor [Seller]: _____.
Grantee [Buyer]: _____.
Legal Description (abbreviated): _____, Additional legal(s) on Page _____.
Assessor's Tax Parcel ID#: _____.
Reference Nos. of Documents Released or Assigned: _____.
Project [Area]: _____.
Parcel [#]: _____.

This Deed of Conservation-Stewardship Easement ("Easement") is granted this _____ day of _____, _____, by The City of Seattle, a municipal corporation of the State of Washington ("Grantor"), to Cascade Land Conservancy, a Washington nonprofit corporation ("Grantee").

WHEREAS, Grantor and Grantee make the following recitals:

A. As a party to the Cedar River Watershed Habitat Conservation Plan dated April 21, 2000, as may be amended or supplemented from time to time ("HCP"), Grantor made a commitment to spend specified amounts of money to acquire, restore, enhance and/or protect high quality spawning, rearing or refuge habitat for anadromous fish species, and the natural features and processes sustaining such habitat, along the mainstem of the lower Cedar River below Landsburg Dam ("Fish Habitat") for the term of the HCP.

B. To implement its obligations under the HCP, Grantor has entered into that certain Agreement for Acquisition and Management of Fish Habitat dated as of _____, 200__ (the "Agreement") with Grantee.



C. In accordance with the Agreement and with the assistance of Grantee, Grantor has acquired an approximately ___ acre parcel of land in King County, Washington, as legally described in Appendix A (the "Protected Property") and depicted in Appendix B, both attached hereto and incorporated herein, for the preservation, and possible restoration and/or enhancement, of Fish Habitat.

D. The nature of Fish Habitat on the Protected Property is documented in a present conditions report, prepared by Grantee, that provides an inventory of the relevant features, current uses and state of improvement of the Protected Property (the "Report"). Grantor has been or will be provided a copy of the Report.

E. In accordance with the Agreement, Grantee is obligated to manage the Protected Property until [the expiration of the HCP on December 31, 2050] [any termination or release as provided for in section 8 or extinguishment as provided for in section 12] to (i) preserve Fish Habitat and (ii) restore or enhance Fish Habitat (as set forth in this Easement and the Report, and as may be set forth in writing by Grantor in the future), and Grantor in facilitation thereof is granting to Grantee a [temporary] [perpetual] conservation-stewardship easement in the Protected Property (as hereinafter defined, the "Easement").

[F. To accomplish perpetual preservation in accordance with the Agreement, Grantee has paid to Grantee \$ _____, the difference between the present value of the Protected Property subject to this perpetual conservation-stewardship easement and the present value of the Protected Property subject to a conservation-stewardship easement terminating on December 31, 2050 (the "CLC Portion").]

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein and in the Agreement, Grantor and Grantee agree as follows:

1. Grant of Easement

Grantor hereby grants, conveys and quit claims, and Grantee accepts, a nonexclusive [perpetual] conservation-stewardship easement (the "Easement") over, under and across the Protected Property on the terms and conditions set forth herein. [This Easement shall terminate on December 31, 2050, and such termination shall not require further action of Grantor or Grantee. However, at the request of Grantor, Grantee shall execute a release of easement that may be recorded.] Notwithstanding the foregoing, this Easement may be terminated or released sooner in accordance with section 8. The conveyance of this Easement is a conveyance of an interest in real property under the provisions of RCW 64.04.130, subject



only to the mutual covenants, terms, conditions and restrictions set forth in this Easement and to those encumbrances set forth in Appendix C hereto.

2. Purpose

The purpose of this Easement is to assure that, for the term of the HCP, the Protected Property will be retained in its natural condition to preserve Fish Habitat thereon and that any use of the Protected Property that will interfere with the Fish Habitat thereon will be prevented (the "Purpose"). The Purpose includes restoration or enhancement of Fish Habitat on the Protected Property, should Grantor determine in the future that such restoration or enhancement is warranted.

Grantor and Grantee intend that this Easement prohibit any use of the Protected Property that is inconsistent with the Purpose. [Grantee acknowledges that the Protected Property contains _____ *(describe use and/or improvement)* and that maintenance of such _____ is consistent with the Purpose of this Easement.] *or, if the property contains improvements that need to be removed:* [Grantee acknowledges that the Protected Property contains _____ *(describe use and/or improvement)* as of the date of this Easement and that such use and/or improvement is inconsistent with the Purpose of this Easement] *or, if the property is bare land:* [The parties agree that the current use of, and improvements to, the Protected Property are consistent with the Purpose of this Easement.]

3. Prohibited Uses

Any activity or use on, above, through, or below the Protected Property that is inconsistent with the Purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, except to the extent such activities or uses are otherwise permitted under Section 4 of this Easement:

A. Subdivision. Legal or "de facto" subdivision of any portion of the Protected Property in any manner.

B. Improvements to the Protected Property. Constructing, installing or preparing the land for any buildings, structures or other improvements of any kind, including without limitation, sheds, parking areas, recreational amenities, roads, trails, access routes, overhead or underground utilities. Impermanent structures (such as, without limitation) mobile homes, campers, other live-in vehicles, boats on trailers, horse trailers or other trailers are also prohibited. No portion of the Protected Property shall be paved or otherwise be covered with concrete, asphalt, gravel, crushed rock, wood shavings or any other paving or surfacing material.



C. Fish Habitat. Any activity that changes, disturbs or alters the Fish Habitat on the Protected Property. Further prohibited activities include, but are not limited to the clearing, draining, filling, dredging, piping, ditching, or diking of Fish Habitat, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses.

4. Reserved Rights of Grantor

Grantor reserves to itself, and to its successors and assigns, any use of, or activity on, the Protected Property that is consistent with the Purpose of the Easement and that is not expressly prohibited herein. Without limiting the generality of the foregoing, Grantor specifically reserves the following uses and activities:

A. Authorized Activity. The right to *(If applicable, insert description of any activity expressly authorized in the second paragraph of Section 2).*

B. Public Access. The right to allow pedestrian public access, provided that such public access does not interfere with Fish Habitat, is not for the purpose of carrying out any of the prohibited uses set forth in Section 3 hereof, and is otherwise consistent with the Purpose and terms of this Easement.

C. Maintenance of Property and Conservation Values. Notwithstanding the provisions of Section 3, and provided that the following actions on or uses of the Protected Property do not interfere with Fish Habitat, Grantor may:

1. Control or remove for ecological purposes non-native or invasive plant and animal species using, if necessary, insecticides, herbicides or other biocides.

2. Alter existing topography or hydrology in order to protect, maintain, enhance or restore Fish Habitat or make any improvements to the Protected Property directly related to maintaining or restoring Fish Habitat; provided, that prior to applying for governmental permits for each such project, Grantor has consulted with Grantee.

3. Alter existing vegetation in order to protect, maintain, enhance or restore Fish Habitat.

4. Remove or trim hazardous trees that present a clear and imminent danger to public health or safety.



5. Install or maintain gates, barriers, and directional or interpretive signage to allow the public access permitted by this Easement.

6. Maintain, reconstruct, relocate or eliminate existing footpaths to allow public access as permitted by Section 4.B of this Easement.

7. Install, maintain, construct and use with motorized vehicles temporary access routes necessary to accomplish the activities allowed by this Section 4; provided that this Section shall not be interpreted or construed to permit public access by motorized vehicles. Such access routes shall be the minimum width and length necessary to accommodate vehicles and materials. Where reasonably feasible, use of hand-operated equipment and foot access shall be utilized. Any such access route shall be sited to avoid or minimize interference with Fish Habitat, and shall be removed with the area restored to its prior natural condition upon project completion.

The provisos in this Section 4.C that prohibit uses or activities in this Easement that "interfere with Fish Habitat" are not intended to prohibit uses or activities that have a de minimis impact on Fish Habitat on the Protected Property.

D. Protection of Health and Safety. The right to undertake other activities necessary to protect public health or safety, including the use of motorized vehicles in emergency situations, or which are actively required by and subject to compulsion of any government agency with authority to require such activity; provided, that Grantor shall make diligent efforts to avoid or minimize interference with Fish Habitat and, to the extent reasonably feasible, the area shall be restored to its prior natural condition upon project completion.

E. Development Rights. The right to use any development rights that are now or hereafter allocated to, implied, reserved or inherent in the Protected Property for the purpose of calculating permissible lot yield or density, or to meet setback, density or open space requirements for development, of any property other than the Protected Property.

5. Responsibilities of Grantor

A. Annual Payment. Until January 1, 2051, the Grantor shall pay Grantee \$3,000 per year (in 2005 dollars) (the "Annual Payment") for its maintenance and stewardship responsibilities with respect to the Protected Property, as those responsibilities are set forth in Section 6 hereof. Of the Annual Payment, \$2,250 shall be used by Grantee for Monitoring and General Maintenance of the Protected Property (as described in sections 6.A.1 and 6.A.2) and \$750 shall be used for the General Stewardship, as described in Section 6.A.3, of all properties on which Grantee has obtained conservation-stewardship easements or stewardship



assignments under the Agreement (the "Protected Properties"). In the event that Grantee is able to provide Monitoring and General Maintenance of the Protected Property for less than \$2,250 in a given year, Grantee shall increase the work to be performed and Grantee's expenditure for General Stewardship of the Protected Properties in the amount equaling the under-expenditure for Monitoring and General Maintenance of the Protected Property. In the event that the Monitoring and General Maintenance required under Section 6 for the Protected Property in a given year costs more than \$2,250, Grantee shall be responsible for such additional costs. Notwithstanding the foregoing, in the event that unforeseeable circumstances occur Grantee may request modification of its responsibilities under Section 6 and/or an increased Annual Payment, and Grantor, at its sole discretion, will determine whether to grant such request.

The Annual Payment shall be prorated for a portion of a year and adjusted for inflation by use of the Consumer Price Index or, when such index is unavailable, by use of recent Consumer Price Indices. Examples of inflation adjustments are shown in **Schedule 1** hereto. Between December 1 and December 31 of each year through 2050, Grantee shall send Grantor an invoice for the Annual Payment, documenting to Grantor's reasonable satisfaction the Monitoring and General Maintenance performed on the Protected Property and the General Stewardship performed on the Protected Properties during that calendar year. Grantor shall pay such invoice within 30 days of receipt.

B. End of Annual Payment. Beginning on January 1, 2051 and continuing thereafter, Grantor no longer shall pay for maintenance and stewardship, but Grantee shall continue to provide all such services to the Protected Property in accordance with section 6 hereof for so long as the City of Seattle owns the Protected Property. Notwithstanding the preceding sentence, on and after January 1, 2051, Grantee in its sole discretion may, upon thirty (30) days prior written notice to Grantor, terminate its obligations in accordance with section 8.B. Other than as specified herein, this Easement is not intended to in any way affect any obligation of the Grantor as owner of the Protected Property, including, without limitation, the payment of all taxes and assessments and compliance with applicable laws.

6. Rights and Responsibilities of Grantee

To accomplish the Purpose of this Easement, Grantee shall have:

A. The responsibility for the general upkeep and maintenance of the Protected Property, consistent with the uses and activities reserved to Grantor under Sections 4.C and D of this Easement. General upkeep and maintenance entails the following:



1. Monitoring: Conducting regular monitoring of the Protected Property depending on activity level (minimum of one visit per calendar quarter) to check for dumping and other illegal activity, to evaluate compliance with terms of the Easement and to implement the general maintenance and ecological stewardship tasks described below.

2. General Maintenance:

a) Maintaining appropriate perimeter postings, such as those relating to trespassing, hunting and public access generally;

b) Maintaining any fences, gates or barriers intended to keep motorized vehicles off the Protected Property in a condition substantially similar to their condition as of the date of this Easement;

c) Removing garbage, closing trails, revegetating informal trails or otherwise taking reasonable measures to protect Fish Habitat in response to unauthorized uses of the Protected Property by third parties other than Grantor; and

d) Advising Grantor of any known conditions (e.g., hazardous trees, illegal activity or trespass, vandalism) that present a clear and imminent danger to public health or safety.

3. General Stewardship:

a) Routine ecological stewardship : Providing stewardship services to retain and improve levels of biodiversity on the Protected Property. Grantee will conduct at least three (3) stewardship events per year on the Protected Property; provided, however, that this affirmative obligation on the Protected Property shall be deemed to be met by Grantee if Grantee has otherwise provided for the year in question at least three (3) stewardship events on each of seven (7) other Protected Properties. Each stewardship event involving volunteers shall use a minimum of fifteen (15) Conservation Corps or volunteer workers for a minimum of six (6) hours (not including transportation time). Each stewardship event using solely Conservation Corps workers shall use a minimum of six (6) workers for a minimum of six (6) hours (not including transportation time). Grantee, in consultation with Grantor, will determine whether to use volunteer or skilled labor or some combination of the two, based upon the appropriate skill level required, safety considerations, technical skill requirements, and efficacy in carrying out the required work tasks. Stewardship events for invasive weed removal shall occur during the months of February , July and September of the same year, unless otherwise agreed to in writing. Typical routine maintenance activities include:

i) Controlling noxious weeds, invasive species and pests as required by applicable law; and



ii) Planting of native vegetation.

b) Capital Projects: Grantee will provide fund development and project planning for capital projects on the Protected Property. Grantee will oversee implementation of any funded projects; staff time to be paid through grants. Grantee will have primary responsibility of prioritizing and identifying the project site and activities (with guidance from and upon mutual agreement with Grantor), developing matching funds, and overseeing implementation. Capital projects shall be approved by Grantor in writing prior to implementation. Typical capital projects include:

i. Erosion control;

ii. Bank stabilization using live-stake techniques; and/or

iii. Installation of large woody debris.

c) Grantor and Grantee shall meet at least annually prior to the growing season to plan for Grantee activities including General Stewardship activities on the Protected Property and the other Protected Properties. Grantor and Grantee shall endeavor to be as efficient as possible in allocating the General Stewardship portion of the Annual Payment among the above-described General Stewardship activities and across all Protected Properties. The parties recognize that the stewardship needs of the Protected Properties may be unequal and, therefore, the expenditure of money for such activities on the Protected Property in a given year may be zero or less than the amount spent on other Protected Properties. If Grantor and Grantee disagree on the aforesaid plan, Grantor's plan shall be adopted; provided, that Grantee shall be under no obligation to expend more effort on General Stewardship activities on the Protected Property and all other Protected Properties in a given year than the General Stewardship portion of the anticipated Annual Payments. Grantee shall inform Grantor of each of the General Stewardship events and activities scheduled on the Protected Property at least two weeks prior to its occurrence.

4. Specific Stewardship Actions: Implementing those stewardship elements (which may include demolition and removal of improvements existing as of the date of this Easement) specifically called out in the Report and agreed to by Grantor; provided, that Grantee shall have no right to any payment from Grantor for such actions without the prior written approval of Grantor, nor shall any portion of the Annual Payment be spent on Specific Stewardship Actions.

B. The right to enter upon the Protected Property at reasonable times in order to undertake Grantee's management responsibilities and to monitor Grantor's compliance with and otherwise enforce the terms of this Easement in accordance with Section 7, all in a



manner that does not unreasonably interfere with Grantor's quiet use and enjoyment of the Property;

C. In the event that the Fish Habitat is impaired by an Act of God, the right to restore all or portions of the Protected Property in ways not inconsistent with the Purpose of the Easement and upon mutual agreement with Grantor;

D. The right to prevent any activity on or use of the Protected Property that is inconsistent with the Purpose of this Easement and to require Grantor's restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, pursuant to Section 7; and

E. The right to undertake such restoration and enhancement of the Protected Property as provided for in a restoration agreement mutually agreed upon by Grantor and Grantee.

F. No later than December 31 of each year for so long as Grantee has management and stewardship responsibilities under this Easement with respect to the Protected Property, the responsibility to provide Grantor with a report that summarizes such Grantee activities during the previous year. The report shall indicate the nature of habitat improvements, structures, trails or other unauthorized man-made improvements, or potential threats to Fish Habitat, actions taken to preserve Fish Habitat, other general maintenance or general stewardship activities (including fund development for capital projects) required by or otherwise consistent with this Easement, and other relevant information that may be requested by Grantor.

In fulfilling its responsibilities hereunder, Grantee shall not be deemed to be an employee of Grantee, nor shall Grantee be authorized to act as the agent or legal representative of the City for any purpose whatsoever. Grantee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of Grantor or to bind Grantor in any manner or thing whatsoever. Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee.

7. Enforcement

A. Grantee. Grantee shall have the right to prevent and correct violations of the terms of this Easement, as follows: With reasonable advance notice to Grantor, Grantee may enter the Protected Property for the purpose of inspecting for violations. If Grantee finds what it believes is a violation, Grantee, before proceeding to informal dispute resolution as described in Section 7.C, shall give Grantor written notice of the violation and thirty (30) days to correct it, or, under circumstances where the violation cannot reasonably be cured within such thirty (30) day period, such longer time as is reasonably necessary, provided that Grantor



has begun curing the violation within such thirty (30) day period and is proceeding diligently to cure the violation. Notwithstanding the foregoing, there shall not be a cure period when an ongoing or imminent violation could significantly diminish or impair the Fish Habitat on the Protected Property.

B. Grantor. Grantor shall have the right to compel Grantee's performance of its responsibilities under the terms of this Easement, or to terminate this Easement in the event of continued nonperformance by Grantee, as follows: If Grantor determines that Grantee is not diligently performing its responsibilities under this Easement or is otherwise in violation of the terms of this Easement, Grantor, before proceeding to informal dispute resolution as described in Section 7.C, shall give Grantee written notice of the nonperformance or violation and thirty (30) days to correct it, or, under circumstances where the nonperformance or violation cannot reasonably be cured within such thirty (30) day period, such longer time as is reasonably necessary, provided that Grantee has begun curing the nonperformance or violation within such thirty (30) day period and is proceeding diligently to cure the nonperformance or violation. Notwithstanding the foregoing, there shall not be a cure period when an ongoing or imminent violation could significantly diminish or impair the Fish Habitat on the Protected Property.

Grantor shall also have the right to the timely and reasonable consent of the Grantee when appropriate under this Easement. If Grantor believes that consent has not been given reasonably, Grantor shall (except in a situation that could irreversibly diminish or impair the Fish Habitat on the Protected Property) give Grantee written notice and thirty (30) days for consent before proceeding to informal dispute resolution as described in Section 7.C. Upon the failure of informal dispute resolution, Grantor may seek an injunction or any other process to mandate Grantee's consent. If, after all appeals have been exhausted or appeals periods have run, a court of competent jurisdiction finds that consent was unreasonably withheld, consent shall be deemed to be given.

C. Informal Dispute Resolution. If the cure period described in Section 7.A or 7.B, as applicable, has run and a cure not effectuated, or if there is no cure period, Grantor's HCP Program Manager and Grantee's King County Senior Conservation Director shall negotiate in good faith and use their best efforts to resolve the dispute. If Grantor and Grantee cannot resolve the dispute, it shall be referred to Grantor's Resource Planning Branch Executive, Seattle Public Utilities, and Grantee's President, or their successors. Only upon failure to resolve the dispute through the foregoing process may Grantor or Grantee pursue the remedies set forth in Sections 7.D or 8. Notwithstanding the foregoing, in a situation that could significantly diminish or impair the Fish Habitat on the Protected Property, either Party may proceed immediately to the remedies set forth in Sections 7.D or 8.



D. Remedies. Either Party may bring an action at law or in equity to enforce the terms of this Easement, by seeking to enjoin the violation temporarily or permanently, to require restoration of the Protected Property to its condition prior to the injury and/or to recover any damages to which that Party may be entitled, as applicable. In addition, in the event that Grantee's nonperformance of its responsibilities under, or violation of, the terms of this Easement is not resolved through informal dispute resolution, Grantor may, in its sole discretion, terminate this Easement. Upon Grantor's request, Grantee shall execute a document evidencing such termination and Grantor may record it. The failure of either Party to discover a violation or to take immediate legal action shall not bar it from doing so at a later time, provided that each Party must act with reasonable promptness upon discovery to correct any claimed violation. Nothing herein shall limit the Parties' other remedies.

8. Termination and Release

A. Automatic Termination. Notwithstanding any provision of this Easement to the contrary, if at any time (1) Grantee, at its sole discretion, determines that it has become impractical for Grantee to undertake its rights and/or responsibilities under this Easement and Grantee has given at least thirty (30) days prior written notice to Grantor, (2) Grantee ceases to exist or to be authorized to acquire and hold conservation easements under RCW 64.04.130 and 84.34.210 (or any successor provision(s) then applicable), (3) bankruptcy or insolvency proceedings are commenced against Grantee, (4) the Agreement has been terminated for any reason by Grantee, in accordance with its terms, or (5) the procedures described in Section 7 have been followed, and Grantor and Grantee have been unable to resolve a dispute about Grantee's fulfillment of its obligations under this Easement, then this Easement and Grantee's rights and responsibilities hereunder shall terminate automatically upon Grantor's notice of same to Grantee. Upon request, Grantee shall execute such documents as Grantor reasonably requests to evidence such termination.

B. Optional Termination. If Grantor terminates the Agreement, Grantor may leave this Easement in effect or, in Grantor's sole discretion, require its termination. [Termination shall be effective upon notice from the City.] [Termination shall be effective upon the City's reimbursement of the CLC Portion with interest at the rate of 4.5% per annum.] In addition, on and after January 1, 2051, Grantee in its sole discretion may release this Easement by giving thirty (30) days prior written notice of same to Grantor. In such event, the Parties shall execute and record a release of this Easement.

9. Transfer of Protected Property

Any time that this Easement, the Protected Property itself, or any interest in it is to be transferred by Grantee or Grantor to a third party, the transferring Party, its successors and



assigns, shall give written notice to the other Party at least thirty (30) days prior to transfer, such notice containing the name, address and telephone number of the prospective transferee or its representative, and, in the case of Grantee, shall obtain prior written approval from Grantor for the assignment, which approval may be granted or denied in Grantor's sole discretion. In addition, the executory contract for the transfer of any interest in all or a portion of the Protected Property shall describe this Easement, and the document by which Grantor divests itself of such interest shall incorporate the terms of this Easement directly or by reference.

10. Estoppel Certificates

Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies, to the knowledge of Grantee whether or not Grantor is in compliance with all obligations of Grantor contained in this Easement, provided that any such document shall be in form and substance satisfactory to Grantee. Such certification shall be limited to the condition of the Protected Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within sixty (60) days of receipt of Grantor's written request therefor.

11. Liability and Indemnification

A. Grantor assumes no responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of Grantee, its employees, contractors or others by reason of this Easement. Grantee shall protect, defend, indemnify and save harmless Grantor, its officers, agents and employees from any and all claims, cost and liabilities whatsoever occurring or resulting from: (a) Grantee's failure to pay any compensation, fees, wages, benefits or taxes; and (ii) the supplying to Grantee or Grantor of work, services, materials or supplies by Grantee's employees or agents or other contractors or suppliers in connection with or in support of performance of Grantee's obligations under this Easement.

B. Grantee shall protect, defend, indemnify and save harmless Grantor and its officers, employees, agents and contractors, and their successors and assigns (collectively, the "Indemnified Parties") from and against any and all liabilities, penalties, losses, costs, damages, claims, causes of action, demands or judgments, or awards of damages, including reasonable attorneys' fees, arising out of or in any way connected with a breach of this Easement by Grantee, its officers, agents or employees, negligent action or inaction of Grantee, its officers, agents or employees in the acquisition or stewardship of Priority Properties, or their failure to comply with all applicable laws. For purpose of this Easement only, Grantee waives the immunity granted it for industrial insurance claims pursuant to



Revised Code of Washington Chapter 51 to the extent necessary to extend its obligations under this section to any claim, demand, or cause of action brought by or on behalf of any employee of Grantee, including judgments, awards and costs arising therefrom and including attorney's fees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

12. Extinguishment and Eminent Domain

A. Extinguishment. If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by joint agreement of the Parties or by judicial proceedings in a court having jurisdiction. Grantee shall have no compensable interest in the Easement under such circumstances. The immediately foregoing provision shall be limited solely to the circumstances in this Section 11.A, and shall not be interpreted to have any application or inference to any other provision of, or circumstance under, this Easement, including, but not limited to, those provisions pertaining to enforcement of the terms of this Easement.

B. Condemnation. If all or any of the Protected Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interest in the Protected Property subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Upon payment of any expenses reasonably incurred by Grantee, Grantee shall not be entitled to compensation and the entirety of any compensation award shall belong to Grantor. The immediately foregoing provision shall be limited solely to the circumstances described in this Section 11.B, and shall not be interpreted to have any application or inference to any other provision of, or circumstance under, this Easement, including, but not limited to, those provisions pertaining to enforcements of the terms of this Easement.

13. Modification

This Easement may be modified by agreement of the parties provided that any such amendment shall be consistent with the Purpose of this Easement and shall not affect its duration. All modifications shall be in writing, signed by both parties and recorded in the real property records of King County.

14. Interpretation



This Easement shall be interpreted under the laws of Washington, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes. Grantor and Grantee and their counsel have reviewed this Easement and agree that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Easement. In the event of any conflict between the legal description in Appendix A and the map contained in Appendix B, the legal description shall control. All recitals and Appendices hereto are by this reference incorporated into this Easement. This Easement may be executed in counterparts, and all such counterparts shall be part of one document.

15. Duration; Successors

This Easement shall be a servitude running with the land [until December 31, 2050] [in perpetuity unless sooner terminated or released as provided for in section 8 or extinguished as provided for in section 12]. Every provision hereof that applies to Grantor or Grantee shall also apply to, be binding upon and inure to the benefit of Grantor and Grantee and their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

16. Notices

Any notices required by this Easement shall be in writing and shall be personally delivered or sent by first class mail to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address.

To Grantor: Seattle Public Utilities
700 5th Ave., Suite 4900
P.O. Box 30418
Seattle, WA 98124-4018
Attn: HCP Program Manager

To Grantee: Cascade Land Conservancy
615 2nd Ave., Suite 625
Seattle, WA 98104
Attn: Chip Nevins

17. Severability

If any provision of this Easement is found to be invalid, illegal or unenforceable, that finding shall not affect the validity, legality or enforceability of the remaining provisions.



In witness whereof, Grantor and Grantee, intending to legally bind themselves to the extent stated herein, have set their hands on the date first written above.

Grantor: The City of Seattle

Chuck Clarke, Director
Seattle Public Utilities

ACCEPTANCE

The Cascade Land Conservancy does hereby accept the above Grant Deed of Conservation-Stewardship Easement, and agrees, by accepting this Easement, to honor the intentions of Grantor as stated in this Easement and the Agreement, to perform and fulfill its responsibilities under the terms of this Easement and to preserve and protect Fish Habitat on the Protected Property during the duration of this Easement.

Dated: _____

GRANTEE:
Cascade Land Conservancy

By: _____
Title: _____



STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 200_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of Seattle Public Utilities of The City of Seattle, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

Given under my hand and official seal hereto affixed the day and year in this certificate first above written.

(Signature of Notary)

(Print or stamp name of Notary)

Notary public in and for the State
of Washington, residing at _____
My appointment expires:



STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 200_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of Cascade Land Conservancy, the _____ that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

Given under my hand and official seal hereto affixed the day and year in this certificate first above written.

(Signature of Notary)

(Print or stamp name of Notary)

Notary public in and for the State
of Washington, residing at _____
My appointment expires: _____



Appendix A

LEGAL DESCRIPTION OF PROTECTED PROPERTY



Appendix B

MAP OF PROTECTED PROPERTY

B-1

Exhibit B to Att. 1 to Cedar River Watershed
HCP Acquisition and Management of Fish Habitat Ordinance
August 8, 2005



Appendix C

ENCUMBRANCES ON PROTECTED PROPERTY



Schedule 1

EXAMPLES SHOWING INFLATION ADJUSTMENTS OF STEWARDSHIP COSTS

1. Property acquired in 2007: initial adjustment from 2005 to 2007 where all indices are known:

$$\frac{\text{Average of Monthly Jan-Dec CPI Indices for 2007}}{\text{Average of Monthly Jan-Dec CPI Indices for 2005}} = \frac{194}{189} = 1.03$$

Adjusting from 2007 to 2008:

$$\frac{\text{Average of Monthly Jan-Dec CPI Indices for 2008}}{\text{Average of Monthly Jan-Dec CPI Indices for 2007}} = \frac{196}{195} = 1.01$$

2. Property acquired in 2008: initial adjustment from 2005 to 2008 where 2008 indices are not known, so the rate of inflation from 2007 to 2008 is estimated by the inflation between 2006 and 2007:

$$\begin{array}{ccc} \frac{\text{Average of Monthly Jan-Dec CPI Indices for 2007}}{\text{Average of Monthly Jan-Dec CPI Indices for 2005}} & \times & \frac{\text{Average of Monthly Jan-Dec CPI Indices for 2007}}{\text{Average of Monthly Jan-Dec CPI Indices for 2006}} \\ \\ \frac{194}{189} & \times & \frac{194}{192} = 1.04 \end{array}$$



**EXHIBIT C TO AGREEMENT FOR ACQUISITION AND MANAGEMENT
OF FISH HABITAT**

**FORM OF CONSERVATION EASEMENT
FROM LANDOWNER TO CITY
(WITH STEWARDSHIP ASSIGNMENT)**

When Recorded Mail To:

The City of Seattle
SPU Real Property Services
P.O. Box 34018
Seattle, WA 98124-4018

DEED OF CONSERVATION EASEMENT

Grantor: [Seller]

Grantee: The City of Seattle

Legal Description (abbreviated):

Additional legal(s) on Page: Appendix A

Assessor's Tax Parcel ID#:

GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT (the "Easement") is granted this ____ day of _____, 200_, by _____, _____ ("Grantor") to The City of Seattle, a municipal corporation of the State of Washington ("Grantee").

I. RECITALS

WHEREAS, Grantor and Grantee make the following recitals:



A. Grantor is the sole owner in fee simple of that certain real property located at _____ in King County, Washington, which is legally described in Appendix A hereto (the "Property").

B. [The Property includes a residential area as of the date of grant of this Easement described as follows: _____ as generally shown on Appendix B hereto (the "Residential Zone"). Within the Residential Zone as of the date of grant of this Easement are _____. Grantee acknowledges that this listing of the improvements existing on the Property as of the date of grant of this Easement is intended for reference purposes only and does not limit in any way additions or alterations to these improvements allowable under this Easement.]

C. [The remaining] approximately ____ acres of the Property, shown on Appendix B as the "Fish Habitat Zone," is a natural area containing high quality spawning, rearing or refuge habitat for anadromous fish species, and the natural features and processes sustaining such habitat ("Fish Habitat").

D. Specific features of the Fish Habitat Zone are documented in an inventory to be maintained on file at the offices of Grantee and incorporated into this Easement by this reference ("Present Conditions Report"). The Present Conditions Report, consisting of reports, maps, photographs, and other documentation, provides an accurate representation of the Property and Fish Habitat Zone at the date of grant of this Easement and is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement. As shown in Appendix E hereto, the Present Conditions Report has been reviewed and accepted by both Grantor and Grantee.

E. Grantor, as owner of the Property, has the right to identify, protect, and preserve the Fish Habitat Zone in perpetuity, and desires to transfer such rights to Grantee in perpetuity.

F. In fulfillment of certain of its obligations under the Cedar River Watershed Habitat Conservation Plan dated April 21, 2000 ("HCP"), as may be amended from time to time, Grantee desires to acquire a conservation easement in the Fish Habitat Zone.

II. GRANT

A. For the reasons stated above, and in consideration of \$10.00 and other good and valuable consideration in hand paid, Grantor hereby grants, conveys and warrants to Grantee, and Grantee accepts, as permitted by Revised Code of Washington ("RCW") 64.04.130 and Ch. 84.34 RCW, a conservation easement (the "Easement") in perpetuity over the Property, subject only to the mutual covenants, terms, conditions and restrictions set forth



in this Easement and to those encumbrances set forth in Appendix C hereto ("Permitted Title Exceptions").

B. This Easement is an interest in real property under the provisions of RCW 64.04.130.

C. Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns.

III. PURPOSE

The purpose of this Easement is to implement the mutual intentions of Grantor and Grantee as expressed in the above Recitals and in the provisions that follow, to assure that the Fish Habitat Zone will be retained forever in its natural condition, and to prevent any use of, or activity on, the Property that will impair or interfere with the Fish Habitat therein (the "Purpose"). Grantor and Grantee intend that this Easement will confine the use of, or activity on, the Property to those uses and activities consistent with this Purpose.

IV. GRANTEE'S RIGHTS AND RESPONSIBILITIES

To accomplish the Purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

A. **Identification, Protection, Restoration and Enhancement.** The right to identify, preserve, restore, enhance and protect in perpetuity the Fish Habitat in the Fish Habitat Zone. Grantee may:

1. Control or remove for ecological purposes non-native or invasive plant and animal species in the Fish Habitat Zone using, if necessary, insecticides, herbicides or other biocides, provided such application is by the narrowest spectrum, least persistent material appropriate for the target species.

2. Alter existing topography or hydrology in the Fish Habitat Zone in order to protect, maintain, enhance or restore Fish Habitat or make any improvements to the Fish Habitat Zone directly related to maintaining or restoring Fish Habitat.

3. Alter existing vegetation on the Fish Habitat Zone in order to protect, maintain, enhance or restore Fish Habitat.

4. Install, maintain, construct and use with motorized vehicles temporary access routes across the Property and in the Fish Habitat Zone necessary to accomplish the activities



allowed by this Section IV; provided that this Section shall not be interpreted or construed to permit public access by motorized vehicles. Such access routes shall be the minimum width and length necessary to accommodate vehicles and materials. Where reasonably feasible, use of hand-operated equipment and foot access shall be utilized. Any such access route shall be sited to avoid or minimize interference with Fish Habitat, and shall be removed with the area restored to its prior natural condition upon project completion.

B. Access.

1. The right to enter the Fish Habitat Zone as Grantee deems necessary for the purpose of making a general inspection to assure compliance with this Easement. Grantee shall provide Grantor with prior written notice of the inspection and conduct the inspection at a mutually agreeable date and time. Grantee shall enter the Fish Habitat Zone along established driveways and/or pathways (including lawns) across the Property, or along such route as may subsequently be identified by the parties.

2. The right to enter the Fish Habitat Zone along established driveways and/or pathways (including lawns) across the Property, or along such route as may subsequently be identified by the parties, at such other times as are necessary to undertake restoration, enhancement and other land management activities on the Fish Habitat Zone. Grantee shall provide Grantor with prior written notice of the restoration, enhancement and/or land management activities and conduct such activities at mutually agreeable date(s) and time(s).

3. The right to enter the Fish Habitat Zone along established driveways and/or pathways (including lawns) across the Property, or along such route as may subsequently be identified by the parties, at such other times as are necessary to inspect after a storm or slide event or if there is reason to believe that a violation of the Easement is about to occur, is occurring, or has occurred, for the purpose of preventing, mitigating, or terminating the violation or otherwise enforcing the provisions of this Easement.

C. Observation and Study. The right to allow persons or small groups to enter the Fish Habitat Zone along established driveways and/or pathways (including lawns) across the Property, or along such route as may subsequently be identified by the parties, to observe and study the ecology of the Fish Habitat Zone; provided that any such persons or groups only accompany Grantee when it is otherwise inspecting the Property, agree to provide Grantor and Grantee with copies of any data or reports resulting from such research, and agree to abide by any other reasonable restrictions placed on access by Grantor and Grantee at the time arrangements are made to observe and study the ecology of the Fish Habitat Zone. All persons or groups given permission to enter the Fish Habitat Zone shall sign a waiver, substantially in the form attached to this Easement as Appendix D, releasing Grantor and Grantee from liability to the extent permitted by law.



D. **Signs.** The right to place a limited number of signs to inform the public about the Conservation Easement. Location of signs shall be by mutual agreement of the Parties.

E. **Enforcement, Injunction and Restoration.** The right to enforce the terms of this Easement, such as by enjoining any use of, or activity on, the Property that is inconsistent with the Purpose of this Easement or violates its terms, including trespass by members of the public, and undertaking or causing to be undertaken the restoration of such areas or features of the Fish Habitat Zone as may be damaged by uses or activities contrary to the provisions of this Easement, consistent with Section IX.

F. **Assignment.** The right to assign, convey, or otherwise transfer Grantee's interest in the Property, consistent with Section XIV.

G. **Development Rights.** The right to all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property (except development rights in the Residential Zone as provided for in this Easement). Grantor and Grantee agree that Grantor may not use such development rights or transfer such development rights to any portion of the Property as it now or hereafter may be bounded or described, or to any other property, or use such development rights for the purpose of calculating permissible lot yield or density of the Property or any other property.

V. GRANTOR'S RIGHTS AND RESPONSIBILITIES

A. **General.** Grantor has the right to engage in, or to permit or invite others to engage in any use of, or activity in, the Property that is not inconsistent with the Purpose of this Easement and that is not prohibited by this Easement. Without limiting the generality of the foregoing, Grantor specifically reserves for itself and its personal representatives, heirs, successor and assigns, the following uses and activities subject to applicable law:

B. **[Residential Zone.** Grantor may carry out all legally permitted activities within the Residential Zone, and may use the Residential Zone for the construction, maintenance, repair, replacement or upgrade of [describe permitted primary and accessory structures], domestic water systems, water systems, utility systems, trails, fences and access driveways; provided, however, that Grantor may not carry out activities on the Property pertaining to mineral exploration, mining, forestry or subdivision that are specifically prohibited under Section VI.H and VI.A respectively or that unreasonably impair Grantee's access to the Fish Habitat Zone.]

C. **Fish Habitat Zone.**

1. **Protection of Public Health or Safety.** Grantor may undertake activities necessary to protect the public health or safety; provided that any such use or activity shall be



conducted in compliance with applicable law and so that interference with Fish Habitat is avoided or, if avoidance is not possible, minimized to the extent possible. Subject to the foregoing, Grantor may prune or cut down timber, shrubs, grasses or other flora, or engage in other uses or activities necessary within the Fish Habitat Zone, as reasonably determined by Grantor to protect public health or safety, to prevent erosion or slides, or as actively required by and subject to compulsion of any governmental agency with authority to require such use or activity shall be considered uses and activities consistent with the Purpose of this Easement. To ensure that interference with Fish Habitat is avoided or minimized, Grantor shall request approval from the Grantee prior to undertaking any use or activity under this Section V.C.1. Grantor's request shall include measures to restore the Fish Habitat Zone to a condition prior to such use or activity to the maximum extent possible.

2. Waste Removal. Grantor may remove any wastes, refuse, or other debris from the Fish Habitat Zone.

3. Footpath. Grantor may create a footpath in the Fish Habitat Zone; provided that such work is undertaken consistent with the Purpose of this Easement and pursuant to a construction plan prepared by Grantor and approved in advance by Grantee, that such footpath shall not be wider than two (2) feet, and that the removal of trees and shrubs in the creation of such footpath is avoided or, if avoidance is not possible, minimized to the extent possible.

4. Construction of fences and gates. Grantor may locate, construct and maintain fences and gates along the Property boundaries; provided that such work is undertaken consistent with the Purpose of this Easement and pursuant to a construction plan prepared by Grantor and approved in advance by Grantee. To the extent possible, such improvements shall complement and enhance the natural features of the Fish Habitat Zone.

5. Utilities. Grantor may locate, install and maintain a utility corridor within a right-of-way across the Fish Habitat Zone; provided that such work is undertaken consistent with the Purpose of this Easement and pursuant to a construction plan prepared by Grantor and approved in advance by Grantee, all such utilities are located underground, and impacts to Fish Habitat are avoided or minimized to the maximum extent practicable.

6. Recreational. Grantor may undertake passive recreational activities such as hiking and bird watching in the Fish Habitat Zone; provided that such activities are conducted in a manner and intensity that does not adversely impact the Fish Habitat of the Fish Habitat Zone.

D. Creation of Mortgage Liens. Grantor may create consensual liens, whether by mortgage, deed of trust, or otherwise, for the purpose of securing repayment of indebtedness; provided that such liens shall remain subordinate to this Easement.



VI. PROHIBITED USES AND ACTIVITIES

Any use of, or activity in, the Property inconsistent with the Purpose of this Easement is prohibited, and Grantor and Grantee acknowledge and agree that they will not conduct, engage in or permit any such use or activity. Without limiting the generality of this Section, the following uses of, or activities in, the Property, though not an exhaustive list, are inconsistent with the Purpose of this Easement and shall be prohibited; except as expressly provided for in Sections IV and V:

A. **Subdivision of Property.** Grantor shall not legally or "de facto" subdivide any portion of the Property, including the Residential Zone, in any manner. More than [list number of permitted primary and accessory structures] is prohibited. Grantor shall retain no right to use all or any portion of the Fish Habitat Zone, or any development rights associated with the Property, in conjunction with other property to create new or reconfigured lots or parcels or additional building sites, or to use all or any portion of the Fish Habitat Zone or any development rights associated with the Property to meet setback, density or open space requirements for development on other property.

B. **Improvements to the Fish Habitat Zone.** Neither Grantor nor Grantee shall construct, install or prepare the land within the Fish Habitat Zone for any buildings, structures or other improvements of any kind, including without limitation, sheds, parking areas, recreational amenities, roads, trails, access routes, overhead or underground utilities, except for the activities specifically allowed for in Section V and conducted in a manner and intensity that minimizes impacts on Fish Habitat in the Fish Habitat Zone. Impermanent structures (such as, without limitation) mobile homes, campers, other live-in vehicles, boats on trailers, horse trailers or other trailers are also prohibited within the Fish Habitat Zone. No portion of the Fish Habitat Zone shall be paved or otherwise be covered with concrete, asphalt, gravel, crushed rock, wood shavings or any other paving or surfacing material.

C. **River, Surface and Subsurface Water.** Neither Grantor nor Grantee shall make any alteration of the course of the Cedar River, modifications to the riverbed, riverbanks, or any other surface water channels or subsurface water in the Fish Habitat Zone. Neither Grantor nor Grantee shall drill any new well for any purpose on the Fish Habitat Zone.

D. **Fish Habitat, Plant Habitat, Wildlife Habitat.** Neither Grantor nor Grantee shall engage in any activity that changes, disturbs or alters the Fish Habitat, plant habitat or wildlife habitat on the Fish Habitat Zone, including without limitation any riparian habitat, riverine habitat, wetland habitat, or forest habitat in the Fish Habitat Zone. Other prohibited activities include, but are not limited to the clearing, draining, filling, dredging, piping, ditching, or diking of Fish Habitat, plant habitat, or wildlife habitat, the alteration or



manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses.

E. **Insecticides, Herbicides, Pesticides and Biocides.** Neither Grantor nor Grantee shall apply, store, release or deposit any insecticide, herbicide, pesticide or biocide, as defined under federal or state law, within the Fish Habitat Zone; except as approved in advance by Grantee to preserve, protect or restore Fish Habitat in the Fish Habitat Zone.

F. **Other Hazardous Substances.** Neither Grantor nor Grantee shall apply, store, release or deposit any petroleum product or any other hazardous, dangerous or toxic waste or substance as now or hereafter defined by applicable law or regulation within the Fish Habitat Zone.

G. **Invasive Species.** Neither Grantor nor Grantee shall intentionally introduce invasive species or genetically modified or cloned species; provided, however, that nothing in this Easement shall be construed to prohibit the introduction of sockeye salmon to the Cedar River.

H. **Erosion or Water Pollution.** Neither Grantor nor Grantee shall undertake any use or activity within the Fish Habitat Zone that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.

I. **Natural Resource Extraction; Agriculture.** Neither Grantor nor Grantee shall conduct any exploration for, or development or extraction of, minerals and hydrocarbons on the Property. Grantor shall not extract soil, sand, gravel, or rock from the Fish Habitat Zone; provided, _____[if reservation of mineral rights]. Conducting grazing of domestic animals or agricultural activities or forest product activities of any kind also is prohibited in the Fish Habitat Zone.

J. **Uncontrolled Drainage.** Neither Grantor nor Grantee shall discharge pollutants or stormwater into the Fish Habitat Zone.

K. **Waste Disposal.** Neither Grantor nor Grantee shall dump, store or dispose of wastes, refuse, and other debris of any kind, including yard waste and compost, within the Fish Habitat Zone.

L. **Removal of Nonhazardous Trees and Other Vegetation.** Neither Grantor nor Grantee shall prune, cut down or top, or otherwise destroy or remove live and dead trees and other understory vegetation within the Fish Habitat Zone; except as deemed necessary by Grantee to preserve, protect or restore the Fish Habitat in the Fish Habitat Zone, or as allowed in Section V.



M. **Wildlife Disruption.** Neither Grantor nor Grantee shall intentionally disrupt wildlife breeding and nesting activities within the Fish Habitat Zone.

N. **Vehicles.** Except as allowed in this Easement or as necessary to protect public health or safety, neither Grantor nor Grantee shall operate motorcycles, dune buggies, snow mobiles, or any type of mechanized, motorized or non-motorized vehicles within the Fish Habitat Zone.

O. **Signs.** Grantor shall not place any signage on the Fish Habitat Zone.

P. **Other Restrictions.** Grantor shall not hunt, trap, camp, burn (or otherwise use fire), discharge firearms, compost or store vehicles of any kind within the Fish Habitat Zone.

VII. NOTICE AND APPROVAL

A. **Notice.**

1. **Grantor.** Several provisions of this Easement require Grantor to notify Grantee and to receive Grantee's written approval prior to undertaking certain permitted uses and activities within the Fish Habitat Zone (e.g., V.C.1 (property protection), V.C.3 (footpath), V.C.4 (fences and gates), V.C.5 (underground utilities) and XII.D (subsequent transfers)). The purpose of requiring Grantor to notify Grantee prior to undertaking these permitted uses and activities is to afford Grantee an opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the Purpose of this Easement. Whenever such notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Easement.

2. **Grantee.** Several provisions of this Easement require Grantee to give notice to Grantor prior to undertaking certain activities within the Fish Habitat Zone (e.g., IV.B (access) and XIV.A (assignment)). Whenever such notice is required, Grantee shall notify Grantor in writing not less than thirty (30) days prior to the date Grantee intends to undertake the use or activity in question, unless otherwise provided for by this Easement.

B. **Approval.** Where approval by one of the parties is required under this Easement, such approval shall be granted or withheld in writing within thirty (30) days of receipt of a written request for approval, and such approval shall not be unreasonably withheld.



1. Grantor. If Grantor must undertake emergency action under Section V.C.1 to protect the public health or safety on the Property or must act by and subject to compulsion of any governmental agency, Grantor may proceed with such action without Grantee's approval only if Grantor notifies the Grantee prior to taking such action and Grantee cannot provide its approval, with or without conditions, within such time as is reasonable under the circumstances and restores the Fish Habitat Zone to a condition prior to such use or activity to the maximum extent possible.

2. Grantee. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the use or activity as proposed would be inconsistent with the Purpose or other terms and conditions of this Easement. Grantee's approval may include reasonable conditions that must be satisfied in undertaking the proposed use or activity.

3. Failure to Approve Within the Required Time. When approval is required under this Easement, and when such approval is not granted or not withheld within the time period and manner set forth in this subsection, approval of the permitted use or activity in question may be presumed.

C. Addresses. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class certified mail, postage prepaid, addressed as follows:

To Grantor:

To Grantee:

City of Seattle
Seattle Public Utilities
700 5th Ave., Suite 4900
P.O. Box 34018
Seattle, WA 98124-4018
Attn: HCP Program Manager

With a copy to:

City of Seattle
Seattle Public Utilities
Real Property Services
P.O. Box 34018
Seattle, WA 98124-4018

or to such other address as either party designates by written notice to the other.



VIII. DISPUTE RESOLUTION

A. **Preventive Discussions.** Grantor and Grantee will promptly give the other notice of problems or concerns arising in connection with the other's actions under this Easement or the use of or activities or conditions on the Property, and will meet as needed, but no later than fifteen (15) days after receipt of a written request for a meeting, to minimize the same.

B. **Alternative Dispute Resolution.** If a dispute is not resolved through preventive discussions under subsection A above, Grantor and Grantee may by mutual agreement submit the matter to mediation or arbitration upon such rules of mediation or arbitration as Grantor and Grantee may agree upon.

IX. GRANTEE'S REMEDIES

A. **Notice of Failure.** If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Fish Habitat Zone resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Fish Habitat Zone so injured.

B. **Grantor's Failure to Respond.** Grantee may bring an action as provided in Section C if Grantor:

1. Fails to cure the violation within thirty (30) days after receipt of a notice of violation from the Grantee; or

2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.

C. **Grantee's Action.** Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:

1. To enjoin the violation, ex parte as necessary, by temporary or permanent injunction;

2. To recover any damages to which it may be entitled for violation of the terms of this Easement or for injury to any Fish Habitat protected by this Easement, including damages for the loss of Fish Habitat; and



3. To require the restoration of the Fish Habitat Zone to the condition that existed prior to any such injury.

Without limiting Grantor's liability in any way, Grantee shall first apply any damages recovered to the cost of undertaking corrective or restoration action in the Fish Habitat Zone.

D. **Immediate Action Required.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Fish Habitat in the Fish Habitat Zone, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.

E. **Nature of Remedy.** Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantee shall be entitled to the injunctive relief described in this section in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

F. **Costs of Restoration.** In the event Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, family members, invitees or licensees in violation of the terms of this Easement shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns, against whom a judgment is entered. In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity.

G. **Grantee's Forbearance.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term or of any right under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

H. **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Fish Habitat Zone or to recover damages for any injury to or changes on the Fish Habitat Zone resulting from causes beyond Grantor's control, including, without



limitation, natural changes, climate change, fire, flood, storm, or earth movement, or from acts of trespassers, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Fish Habitat Zone resulting from such causes.

I. **Estoppel Certificates.** Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, that certifies, to the best actual knowledge of Grantee's HCP Program Manager (or successor thereto), whether or not Grantor is in compliance with all obligation of Grantor contained in this Easement, provided that any such document shall be in form and substance satisfactory to Grantee. Such certification shall be limited to the condition of the Property and Fish Habitat Zone as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within sixty (60) days of receipt of Grantor's written request therefor.

X. PUBLIC ACCESS

No general public access to any portion of the Property, including the Fish Habitat Zone, is conveyed by this Easement. Access by any person to the Fish Habitat Zone is only through special arrangement with Grantor and Grantee, in accordance with the procedures outlined in Section IV.C. Such access may not unreasonably interfere with the Fish Habitat in the Fish Habitat Zone or with Grantor's quiet enjoyment of the Property.

XI. COSTS, LIABILITIES AND INSURANCE, TAXES, AND INDEMNIFICATION

A. **Costs, Liabilities and Insurance.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Grantor shall keep the Property free and clear of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor; provided that the Property shall be deemed to be free of such liens if Grantor is diligently challenging the application of such liens to the Property.

B. **Taxes.** Grantor shall pay all taxes levied against the Property by government authority as they become due, and shall furnish the Grantee with satisfactory evidence of payment upon request. If Grantor fails to pay any taxes when due, Grantee is authorized, but in no event obligated, to make or advance such payment of taxes upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the maximum rate allowed by law.



C. **Grantor Indemnification.** Grantor shall hold harmless, indemnify, and defend the Grantee, its successors and assigns, and its officers, employees, contractors, agents, invitees and their successors, and assigns (collectively "Indemnified Grantee Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with:

1. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, event or other matter related to or occurring in or about the Property, except to the extent caused by the acts or omissions of the Indemnified Grantee Parties;

2. Violations or alleged violations of any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, except to the extent caused by the acts or omissions of any of the Indemnified Grantee Parties on the Property; and

3. The obligations specified in subsections A and B of this section.

D. **Grantee Indemnification.** Grantee shall hold harmless, indemnify and defend Grantor, its successors and assigns, and its officers, employees, agents, contractors and invitees, and their successors and assigns (collectively, "Indemnified Grantor Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including without limitation reasonable attorney's fees, arising from or in any way connected with:

1. Injury to or death of any person, or physical damage to any property, resulting from any act or omission of Grantee, its officers, employees, agents, contractors or invitees related to or occurring in or about the Property that is a consequence of such persons' willful misconduct or negligent actions or omissions on or about the Property, except to the extent caused by the acts or omissions of the Indemnified Grantor Parties; and

2. Violations or alleged violations of any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials by Grantee, its officers, employees and agents, except to the extent caused by the acts or omissions of the Indemnified Grantor Parties.

XII. EXTINGUISHMENT AND SUBSEQUENT TRANSFER

A. **Extinguishment.** If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can be terminated or extinguished, whether in whole or in part, only by mutual agreement of Grantor and Grantee or by judicial



proceedings in a court having jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Section XII.B of this Easement.

B. **Valuation.** This Easement constitutes a real property interest immediately vested in Grantee. For the purpose of Section XII.A of this Easement, the parties hereto stipulate that this Easement has a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in the value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. For the purposes of this paragraph, Grantor and Grantee agree that the value of the Easement at the time of this grant is evidenced by that certain real property appraisal prepared by _____, dated _____, on file with Grantee. This ratio is _____ and shall remain constant.

C. **Condemnation.** In the event that the Property is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.

D. **Subsequent Transfers.** Grantor agrees to:

1. Incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest;

2. Describe this Easement in and append it to, any executory contract for the transfer of any interest in the Property;

3. Give written notice to the Grantee of the transfer of any interest no later than forty-five (45) days prior to the date of such transfer.

The failure of Grantor to perform any act required by this Section shall not impair the validity of this Easement or limit its enforceability in any way.

XIII. AMENDMENT

A. **[Survey]** Grantee shall arrange for a survey and field marking of the exact boundaries of the Residential Area within three months of recording of this Easement, which survey may be completed through use of a global positioning system ("GPS"). Grantor and Grantee shall promptly record the survey and legal description of the Residential Area as an



amendment to Appendix B of this Easement. Failure to complete this survey and record this amendment shall not affect the enforceability or validity of any other provision of this Easement. [Necessary only if there is a residential zone]

B. General. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantee and Grantor are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of the Grantee under any applicable laws, including RCW 64.04.130, Chapter 84.34 RCW, or Section 170(h) of the Internal Revenue Code, as amended (or any successor provision(s) then applicable), and any amendment shall be consistent with the Purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of King County, Washington, and any other jurisdiction in which such recording is required.

XIV. ASSIGNMENT

This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to a government unit or other nonprofit organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.250 (or any successor provision(s) then applicable). As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. Grantor hereby acknowledges its authorization and approval of the assignment of certain stewardship rights in this Easement to the Cascade Land Conservancy. The stewardship assignment shall be substantially in the form attached to this Easement as Appendix F.

XV. RECORDATION

Grantee may record this Easement, and any amendments thereto, in timely fashion in the official records of King County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement. Alternatively, Grantee may record a memorandum of this Easement and any amendments thereto, in which event both parties shall execute the necessary documents.

XVI. GENERAL PROVISIONS

A. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Washington.



B. **Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the reservation to effect the Purpose of this Easement and the policy and purposes of RCW 64.04.130 and Chapter 84.34 RCW. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Grantor and Grantee agree that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Easement. In the event of any conflict between a map and a legal description, established by GPS or otherwise, the latter shall control.

C. **Severability.** If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

D. **Entire Easement.** This instrument sets forth the entire agreement of the parties with respect to the Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section XIII.

E. **No Forfeiture.** Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.

F. **"Grantor" - "Grantee".** The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively, the above-named Grantor, and its personal representatives, heirs, successors, and assigns, and the above-named Grantee, and its successors and assigns.

G. **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

H. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's entire interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive the transfer.

I. **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an



original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

J. **Recitals and Appendices.** All recitals and Appendices to this Easement are incorporated herein by this reference.

K. **Effective Date.** The effective date of this Easement is the date of recording in the records of King County, Washington.

[L. **Subordination.** At the time of conveyance of this Easement, the Property is subject to a deed of trust against the Property. The beneficiaries of the deed of trust have agreed by either release and reconvey the deed of trust or by separate instrument, which will be recorded concurrently with this Easement, to subordinate their rights in the Property to this Easement or to the extent necessary to permit Grantee to enforce the Purpose of this Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the beneficiary under the deed of trust.]

XVII. SCHEDULE OF APPENDICES

- A. **Legal Description of the Property**
- B. **Description[s] of the [Property] [Residential and Fish Habitat Zones]**
- C. **Permitted Title Exceptions**
- D. **Agreement for Release from Liability**
- E. **Acknowledgment of Present Conditions Report**
- F. **Stewardship Assignment**

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.



IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument.

Grantor

Dated: _____

[Appropriate Grantor acknowledgment]



ACCEPTANCE

Pursuant to the authority conferred by Ordinance _____ passed _____, I accept on behalf of The City of Seattle the interest in real property conveyed by this Deed of Conservation Easement dated _____, 20__.

Dated: _____

THE CITY OF SEATTLE

By: _____
Chuck Clarke, Director
Seattle Public Utilities

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this day personally appeared before me, _____, known to me to be the Director of Seattle Public Utilities of The City of Seattle, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated he was authorized to execute said instrument.

Given under my hand and official seal this day of _____, 200 .

NOTARY PUBLIC in and for the State of
Washington, residing at

My Commission expires: _____



APPENDIX A

LEGAL DESCRIPTION OF THE PROPERTY



APPENDIX B

**DESCRIPTION[S] OF THE [PROPERTY] [RESIDENTIAL AND FISH HABITAT
ZONES]**



APPENDIX C

PERMITTED TITLE EXCEPTIONS



APPENDIX D

Agreement for Release from Liability

In consideration for permission to enter the Fish Habitat Zone of that certain property, located at _____, Washington (the "Property") and owned by _____ (hereafter the "Fish Habitat Zone"), to observe and study the ecology of the Fish Habitat Zone, I hereby acknowledge and agree to the following:

1. My activities in the Fish Habitat Zone involve many risks, including, but not limited to, risks of bodily injury/illness or death resulting from accident, poisonous plants or animals;

2. I am entering the Fish Habitat Zone at my own risk and I assume full responsibility for the risk of bodily injury or death, whether foreseen or unforeseen, in connection with my activities in the Fish Habitat Zone;

3. I HEREBY RELEASE, WAIVE AND DISCHARGE _____ and their heirs, personal representatives, successors, and assigns, the City of Seattle ("City") and its officers, employees, agents, successors, and assigns, and the Cascade Land Conservancy ("Cascade") and its officers, employees, agents, successors, and assigns from any liability for harm or loss suffered by me in connection with my activities in the Fish Habitat Zone or my access thereto across the Property, WHETHER BY NEGLIGENCE OR NOT;

4. I FURTHER SAVE AND HOLD HARMLESS _____, and their heirs, personal representatives, successors or assigns, the City, and its officers, employees, agents, successors, and assigns, and Cascade and its officers, employees, agents, successors, and assigns from any and all liability, actions, causes of action, claims, demands of every kind and nature whatsoever by me or my family, estate, heirs, executors, administrators, legal representatives, successors or assigns arising out of my activities in the Property;

5. I hereby expressly agree that this "AGREEMENT FOR RELEASE FROM LIABILITY" is intended to be as broad and inclusive as permitted by the laws of the State of Washington, and if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full force and effect; and



6. This "AGREEMENT FOR RELEASE FROM LIABILITY" contains the entire agreement between the parties hereto and that the terms of this Agreement are contractual in nature and not a mere recital; I understand all of the terms; and I am of lawful age and legally competent to sign this Agreement.

** I HAVE FULLY INFORMED MYSELF OF THE CONTENT OF THIS "AGREEMENT FOR RELEASE FROM LIABILITY" BY READING IT CAREFULLY BEFORE SIGNING IT.

Name (print)

Signature

Date

City/County/State



APPENDIX E

Acknowledgment of Easement Documentation Report

Grantor and the HCP Program Manager of the City of Seattle, Seattle Public Utilities each acknowledge that (s)he has read the "Present Conditions Report," dated _____, 200_, and that the report accurately reflects the currently available baseline data regarding the condition of the Property subject to the Easement as of the date of conveyance of the Easement.

THE CITY OF SEATTLE

_____,

By: _____

Its _____

Seattle Public Utilities

Date: _____

Date: _____



APPENDIX F

STEWARDSHIP ASSIGNMENT

This STEWARDSHIP ASSIGNMENT (this "Assignment") is executed as of the _____ day of _____, 200_, by THE CITY OF SEATTLE, a municipal corporation of the State of Washington ("Assignor" or the "City"), to and in favor of CASCADE LAND CONSERVANCY, a Washington nonprofit corporation ("Assignee" or "Cascade") (collectively, the "Parties").

RECITALS

A. Assignor has entered into a conservation easement recorded under Auditor's File No. _____ in King County, Washington ("Easement") with _____ (the "Easement Grantor") in regards to property located at _____, the legal description of which is set forth in Appendix A attached hereto (the "Property").

B. The Easement provides for preservation, restoration, enhancement and stewardship of high quality spawning, rearing or refuge habitat for anadromous fish species and the natural features and processes sustaining such habitat ("Fish Habitat") within the portion of the Property described in Appendix B attached hereto (the "Fish Habitat Zone").

C. The Easement allows Assignor to assign to Assignee certain rights for access to and stewardship of the Fish Habitat Zone.

D. In order to implement certain obligations of Assignor under the Cedar River Watershed Habitat Conservation Plan, dated April 21, 2000 ("HCP"), Assignor and Assignee have entered into the Agreement for Acquisition and Management of Fish Habitat dated as of _____, 200_ (the "Agreement"). Among other things, the Agreement obligates Assignee to manage the Fish Habitat Zone to preserve, restore and/or enhance Fish Habitat. Assignor is assigning this Assignment to Assignee to effectuate Assignee's obligations under the Agreement.

Now, therefore, the City and Cascade agree as follows:

AGREEMENT

1. **Term.** This Assignment shall be in full force and effect from the date first set forth above until Assignor no longer is the holder of the Easement, unless earlier terminated in accordance with the provisions hereof.



2. **Assignment and Assumption.** For and in consideration of Cascade's assumption of the obligations and responsibilities set forth in the Agreement and Section 3 of this Assignment, the City does hereby partially assign, transfer, set over, convey and deliver to Cascade the following undivided rights under the Easement, which rights shall be held in common by the City and Cascade:

A. Identification, Protection, Restoration and Enhancement. To identify, preserve, and protect Fish Habitat within the Fish Habitat Zone, and to enhance and/or restore Fish Habitat therein by mutual agreement with the City.

B. Access.

(1) To enter the Fish Habitat Zone, as deemed necessary by Cascade, for the purpose of making a general inspection to assure compliance with the Easement. Cascade shall provide the Easement Grantor and the City with prior written notice of the inspection and shall conduct the inspection at a mutually agreeable date and time. Cascade shall enter the Fish Habitat Zone along established driveways and/or pathways (including lawns) across the Property, or along such route as may subsequently be identified by the Easement Grantor and the City.

(2) To enter the Fish Habitat Zone along established driveways and/or pathways (including lawns) across the Property, or along such route as may subsequently be identified by the Easement Grantor and the City, at such other times as are necessary to undertake restoration, enhancement and other land management activities in the Fish Habitat Zone. Cascade shall provide the Easement Grantor and the City with prior written notice of the restoration, enhancement and/or land management activities and conduct such activities at mutually agreeable date(s) and time(s).

C. Observation and Study. To allow persons or small groups to enter the Fish Habitat Zone along established driveways and/or pathways (including lawns) across the Property, or along such route as may subsequently be identified by the Easement Grantor and the City, to observe and study the ecology of the Fish Habitat Zone; provided that any such persons or groups only accompany Cascade when it is otherwise inspecting the Property, agree to provide the Easement Grantor, the City and Cascade with copies of any data or reports resulting from such research, and agree to abide by any other reasonable restrictions placed on access by the Easement Grantor and the City at the time arrangements are made to observe and study the ecology of the Fish Habitat Zone. All persons or groups given permission to enter the Fish Habitat Zone shall sign a waiver, substantially in the form attached to the Easement as Appendix D, releasing the Easement Grantor, the City and Cascade from liability to the extent permitted by law.

D. Signs. Upon the City's request, to place a limited number of signs to inform the public about the Easement. Location of signs shall be by mutual agreement of the Easement Grantor and the City.



3. **Assignee's Responsibilities.** To accomplish the Purpose of the Easement, Cascade shall be responsible for the general upkeep and maintenance of the Fish Habitat Zone, consistent with the uses and activities reserved to the Easement Grantor under this Easement. General upkeep and maintenance entails the following:

A. Monitoring. Conducting regular monitoring of the Protected Property (minimum of one visit per calendar quarter depending on activity) to check for dumping and other illegal activity, to evaluate compliance with terms of the Easement and to implement the general maintenance and stewardship tasks described below.

B. General Maintenance

(1) Maintaining appropriate perimeter postings of the Fish Habitat Zone, such as those relating to trespassing, hunting and public access generally;

(2) Maintaining any fences, gates or barriers intended to keep motorized vehicles off the Fish Habitat Zone in a condition substantially similar to their condition as of the date of this Easement;

(3) Removing garbage, closing trails, revegetating informal trails or otherwise taking reasonable measures to protect Fish Habitat in response to unauthorized uses of the Fish Habitat Zone by third parties other than Assignor; and

(4) Advising Assignor, as grantee of the Easement, of any potential violations thereof.

C. General Stewardship

(1) Routine ecological stewardship. Providing stewardship services to retain and improve levels of biodiversity within the Fish Habitat Zone. Cascade will conduct at least three (3) stewardship event per year in the Fish Habitat Zone; provided, however, that this affirmative obligation for the Fish Habitat Zone shall be deemed to be met by Cascade if it has otherwise provided for the year in question at least three (3) stewardship events on each of seven (7) other properties acquired under the Agreement (collectively, the "Properties"). Each stewardship event involving volunteers shall use a minimum of fifteen (15) Conservation Corps or volunteer workers for a minimum of six (6) hours (not including transportation time). Cascade, in consultation with the City, will determine whether to use volunteer or skilled labor or some combination of the two, based upon the appropriate skill level required, safety considerations, technical skill requirements, and efficacy in carrying out the required work tasks. Stewardship events for invasive weed removal shall occur during the months of February, July and September of the same year, unless otherwise agreed to in writing. Typical ecological routine maintenance activities include:

(a) Controlling noxious weeds, invasive species and pests as required by applicable law; and



(b) Planting of native vegetation.

(2) Capital Projects. Cascade will provide fund development and project planning for capital projects in the Fish Habitat Zone. Cascade will oversee implementation of any funded projects; staff time shall be paid through such project funds. Cascade will have primary responsibility of prioritizing and identifying the project site and activities (with guidance from and upon mutual agreement with the City), developing matching funds, and overseeing implementation. Capital projects shall be approved by the City in writing prior to implementation. Typical capital projects include:

(a) Erosion control;

(b) Bank stabilization using live-stake techniques; and/or

(c) Installation of large woody debris.

(3) Cascade and the City shall meet at least annually prior to the growing season to plan for Cascade's activities, including General Stewardship activities, on the Property and other Properties. The City and Cascade shall endeavor to be as efficient as possible in allocating the portion of the Annual Payment (as hereinafter defined) designated for General Stewardship among the above-described General Stewardship activities and across all the Properties. The parties recognize that the stewardship needs of the Properties may be unequal and, therefore, the expenditure of money for such activities on the Property in a given year may be zero or less than the amount spent on other Protected Properties. If the City and Cascade disagree on the aforesaid plan, the City's plan shall be adopted; provided, that Cascade shall be under no obligation to expend more effort on General Stewardship activities on the Property and all other Properties in a given year than the General Stewardship portion of the anticipated Annual Payments. Cascade shall inform the City of each of the General Stewardship events and activities scheduled on the Property at least two weeks prior to its occurrence.

D. Specific Stewardship Actions. Implementing those stewardship elements (which may include demolition and removal of improvements existing as of the date of this Easement) specifically called out in the Present Conditions Report, as defined in the Easement, and agreed to by the City; provided, that Cascade shall have no right to any payment from the City for such actions without the prior written approval of the City, nor shall any portion of the Annual Payment be spent on Specific Stewardship Actions.

E. Reporting. No later than December 31 of each year for so long as Assignee has management and stewardship responsibilities under this Assignment with respect to the Property, providing Assignor with a report that summarizes such activities during the previous year. The report shall indicate the nature of habitat improvements, structures, trails or other unauthorized man-made improvements, or potential threats to Fish Habitat, actions taken to preserve Fish Habitat, other general maintenance or general stewardship activities (including fund



development for capital projects) required by or otherwise consistent with this Assignment, and other relevant information that may be requested by Assignor.

4. **Assignee's Exercise of Rights and Responsibilities**

Cascade hereby represents and warrants that its exercise of rights and responsibilities under this Assignment will be consistent with the Purpose of the Easement. In fulfilling its responsibilities hereunder, Assignee shall not be deemed to be an employee of Assignor, or shall Assignee be authorized to act as the agent or legal representative of Assignor for any purpose whatsoever. Assignee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of Assignor or to bind Assignor in any manner or thing whatsoever. Other than as specified herein, this Assignment is not intended to impose any legal or other responsibility on Cascade.

5. **Assignor's Responsibilities**

A. Annual Payment. Until January 1, 2051, the City shall pay Cascade \$3,000 per year (in 2005 dollars) (the "Annual Payment") for its maintenance and stewardship of the Property in accordance with this Assignment. Of the Annual Payment, \$2,250 shall be used by Cascade for Monitoring and General Maintenance of the Property (as described in sections 3.A and 3.B) and \$750 shall be used for General Stewardship (as described in section 3.C) of all Properties. In the event that Cascade is able to provide Monitoring and General Maintenance of the Property for less than \$2,250 in a given year, Cascade shall increase the work to be performed and Cascade's expenditure for General Stewardship of the Properties in the amount equaling the under-expenditure for Monitoring and General Maintenance of the Property. In the event that the Monitoring and General Maintenance required under section 3 for the Property in a given year costs more than \$2,250, Cascade shall be responsible for such additional costs. Notwithstanding the foregoing, in the event that unforeseeable circumstances occur, Cascade may request modification of its responsibilities under section 3 and/or an increased Annual Payment, and the City, in its sole discretion, will determine whether to grant such request.

The Annual Payment shall be prorated for a portion of a year and adjusted for inflation by use of the Consumer Price Index or, when such index is unavailable, by use of recent Consumer Price Indices. Examples of inflation adjustments are shown in **Schedule 1** hereto. Between December 1 and December 31 of each year through 2050, Cascade shall send City an invoice for the Annual Payment, documenting to City's reasonable satisfaction the Monitoring and General Maintenance performed on the Property and the General Stewardship performed on all Properties during that calendar year, and the City shall pay such invoice within 30 days of receipt.

B. End of Annual Payment. Beginning on January 1, 2051 and continuing thereafter, the City no longer shall pay for maintenance and stewardship, but Cascade shall continue to provide all such services to the Property in accordance with this Assignment if, and for so long as, the City holds the Easement. Notwithstanding the preceding sentence, on



and after January 1, 2051, Cascade, in its sole discretion may, upon thirty (30) days prior written notice to the City, terminate Cascade's obligations in accordance with section 7. Other than as specified herein, this Assignment is not intended to impose any legal or other responsibility on Assignor.

6. Enforcement of Responsibilities under Assignment

A. General. The City shall have the right to compel Cascade's fulfillment of its responsibilities under this Assignment and also to release Cascade from and terminate this Assignment, as set forth in this Section 6. Cascade shall have the right to compel the City's fulfillment of its responsibilities under this Assignment, as set forth in this Section 6. If one Party determines that the other party is not diligently performing its responsibilities under this Assignment or is otherwise in violation of its terms, the Party making such determination shall give the other Party written notice of the nonperformance or violation and thirty (30) days to correct it, or, under circumstances where the nonperformance or violation cannot reasonably be cured within such thirty (30) day period, such longer time as is reasonably necessary, provided that such other Party has begun curing the nonperformance or violation within such thirty (30) day period and is proceeding diligently to cure the nonperformance or violation, before proceeding to informal dispute resolution as described in Section 7.

B. Informal Dispute Resolution. If the cure period described in Section 6.A, as applicable, has run and a cure not effectuated, Cascade's King County Senior Conservation Director and the City's HCP Program Manager, or their successors, shall negotiate in good faith to resolve the dispute, except in a situation that could significantly diminish or impair the Fish Habitat in the Fish Habitat Zone of the Property. If the above-described persons cannot resolve the dispute in a timely manner, it shall be referred to the City's Resource Planning Branch Executive, Seattle Public Utilities, and Cascade's President, or their successors. Only upon failure to resolve the dispute in a timely manner through the foregoing process may the City pursue the remedies set forth in Section 6.C.

C. Remedies. Either Party may bring an action at law or in equity to enforce the terms of this Easement, by seeking to enjoin the violation temporarily or permanently, to require restoration of the Protected Property to its condition prior to the injury and/or to recover any damages to which that Party may be entitled, as applicable. In addition, in the event that Assignee's nonperformance of its responsibilities under, or violation of, the terms of this Assignment is not resolved through informal dispute resolution, Assignor may, in its sole discretion, terminate this Assignment. Upon Assignor's request, Assignee shall execute a document evidencing such termination and Assignor may record it. The failure of either Party to discover a violation or to take immediate legal action shall not bar it from doing so at a later time, provided that each Party must act with reasonable promptness upon discovery to correct any claimed violation. Nothing herein shall limit the Parties' other remedies.

7. Termination and Release



A. Automatic Termination. Notwithstanding any provision of this Assignment to the contrary, if at any time during the term of this Assignment (1) Cascade, in its sole discretion, determines that it has become impractical for Cascade to undertake its rights and/or responsibilities under this Assignment and Cascade has given at least thirty (30) days prior written notice to the City, (2) Cascade ceases to exist or to be authorized to acquire and hold conservation easement interests under RCW 64.04.130 and 84.34.210 (or any successor provision(s) then applicable), (3) bankruptcy or insolvency proceedings are commenced against Cascade, (4) the Agreement has been terminated for any reason by Cascade, in accordance with its terms, or (5) the procedures described in Section 6 have been followed, and the City and Cascade have been unable to resolve a dispute about Cascade's fulfillment of its obligations under this Assignment, then this Assignment and Cascade's rights and responsibilities hereunder shall terminate automatically upon the City's notice of same to Cascade.

B. Optional Termination. If the City terminates the Agreement, the City may leave any then-existing Assignments in effect or, in the City's sole discretion, require their termination. Said termination shall be effective upon notice from the City. Upon request, Cascade shall execute such documents as the City reasonably requests to evidence such termination. In addition, on and after January 1, 2051, Cascade in its sole discretion may terminate this Assignment by giving thirty (30) days prior written notice of same to the City. In such event, the Parties shall execute and record the applicable document.

8. **No Interest in Easement.** Cascade acknowledges that it has no compensable interest in the Easement. In particular, Cascade acknowledges that if the Easement is extinguished or the Fish Habitat Zone is taken, in whole or in part, by exercise of the power of eminent domain, only the City (and not Cascade) is entitled to compensation.

9. **Liability and Indemnification**

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

B. Cascade shall protect, defend, indemnify and save harmless the City and its officers, employees, agents and contractors, and their successors and assigns (collectively, the "Indemnified Parties") from and against any and all liabilities, penalties, losses, costs, damages, claims, causes of action, demands or judgments, or awards of damages, including reasonable attorneys' fees, arising out of or in any way connected with a breach of this Assignment by Cascade, its officers, agents or employees, negligent action or inaction of



Cascade, its officers, agents or employees in the acquisition or stewardship of the Properties, or their failure to comply with all applicable laws. For purpose of this Assignment only, Cascade waives the immunity granted it for industrial insurance claims pursuant to Revised Code of Washington Chapter 51 to the extent necessary to extend its obligations under this section to any claim, demand, or cause of action brought by or on behalf of any employee of Cascade, including judgments, awards and costs arising therefrom and including attorney's fees. The Parties acknowledge that these provisions were specifically negotiated and agreed by them.

10. **Interpretation.** The defined terms in this Assignment shall have the meaning provided in the Easement unless specifically defined herein. All recitals and Appendices to this Assignment are, by this reference, incorporated herein.

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

ASSIGNOR (CITY):

THE CITY OF SEATTLE, a Washington
municipal corporation

By _____
Director, Seattle Public Utilities

ASSIGNEE (CASCADE):

CASCADE LAND CONSERVANCY, a
Washington nonprofit corporation

By _____
Its _____



STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 200_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of Seattle Public Utilities of The City of Seattle, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

Given under my hand and official seal hereto affixed the day and year in this certificate first above written.

(Signature of Notary)

(Print or stamp name of Notary)

Notary public in and for the State of
Washington, residing at _____

My appointment expires: _____
STATE OF WASHINGTON)
) ss.

COUNTY OF KING)

On this _____ day of _____, 200_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of the Cascade Land Conservancy, the non-profit corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

Given under my hand and official seal hereto affixed the day and year in this certificate first above written.

(Signature of Notary)

(Print or stamp name of Notary)

Notary public in and for the State of
Washington, residing at _____

My appointment expires: _____



APPENDIX A

LEGAL DESCRIPTION OF THE PROPERTY



APPENDIX B

DESCRIPTION OF THE FISH HABITAT ZONE



Schedule 1

EXAMPLES SHOWING INFLATION ADJUSTMENTS OF STEWARDSHIP COSTS

1. Property acquired in 2007: initial adjustment from 2005 to 2007 where all indices are known:

$$\frac{\text{Average of Monthly Jan-Dec CPI Indices for 2007}}{\text{Average of Monthly Jan-Dec CPI Indices for 2005}} = \frac{194}{189} = 1.03$$

Adjusting from 2007 to 2008:

$$\frac{\text{Average of Monthly Jan-Dec CPI Indices for 2008}}{\text{Average of Monthly Jan-Dec CPI Indices for 2007}} = \frac{196}{195} = 1.01$$

2. Property acquired in 2008: initial adjustment from 2005 to 2008 where 2008 indices are not known, so the rate of inflation from 2007 to 2008 is estimated by the inflation between 2006 and 2007:

$$\begin{array}{ccc} \text{Average of Monthly Jan-Dec CPI Indices for 2007} & & \text{Average of Monthly Jan-Dec CPI Indices for 2007} \\ \hline & \times & \hline \text{Average of Monthly Jan-Dec CPI Indices for 2005} & & \text{Average of Monthly Jan-Dec CPI Indices for 2006} \\ & & \hline \frac{194}{189} & \times & \frac{194}{192} = 1.04 \end{array}$$



**EXHIBIT D TO AGREEMENT FOR ACQUISITION AND MANAGEMENT
OF FISH HABITAT**

FORM OF REAL ESTATE PURCHASE AND SALE AGREEMENT

This REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is entered into by and between _____, _____ ("Seller"), and CASCADE LAND CONSERVANCY, a Washington nonprofit corporation ("Cascade"), and its successors and assigns, as of the date appearing in the last paragraph of this Agreement ("Effective Date"). Cascade, its successors and assigns shall hereinafter be referred to collectively as "Buyer." Buyer and Seller shall hereinafter be collectively referred to as the "Parties."

RECITALS

A. Seller owns certain real property situated in King County, Washington, more particularly described on **Appendix "A"** attached hereto and defined in Section 1 below (the "Property").

B. Seller desires to sell **[the Property/a conservation easement over the Property]** to Buyer, and Buyer desires to purchase **[the Property/a conservation easement over the Property]** from Seller on the terms and conditions of this Agreement. **[The conservation easement over the Property shall be substantially in the form provided at Appendix "C" attached hereto ("Easement").]**

C. Seller acknowledges that Cascade intends to assign this Agreement and the rights, title and interest herein to the City of Seattle (the "City") before Closing (as defined below) and that such assignment shall be a condition of Closing. If and until such assignment occurs, "Buyer" shall refer solely to Cascade. Upon assignment to and assumption by the City of all of the rights and interest in this Agreement and the Property, "Buyer" shall refer solely to the City.

[D. Seller believes that the purchase price specified herein for the Property/the Easement is below the fair market value of the Property/the Easement. Seller intends that the difference between the purchase price and fair market value shall be a charitable contribution to Buyer. However, Buyer makes no representation as to the tax consequences of the transaction contemplated by this Agreement. Seller will obtain independent tax counsel and be solely responsible for compliance with the gift value substantiation requirements of the Internal Revenue Code. To the extent that the purchase price is below fair market value, the Parties agree that it does not reflect the existence of defects in the Property, such as environmental conditions requiring remediation, known to Seller or Buyer.]



AGREEMENT

In consideration of the foregoing and the performance of the mutual covenants herein contained, Seller and Buyer agree as follows:

1. **PROPERTY:** The "Property" subject to this Agreement consists of all of the following:

1.1 That certain real property legally described in the attached Appendix "A," including all improvements thereon ("Land").

1.2 [for purchase of Property only] All rights, privileges and easements appurtenant to the Land, including without limitation all minerals, oil, gas and other hydrocarbon substances on the Land, all development rights, timber, timber rights, air rights, water, water rights and water stock relating to the Land, and any and all easements, rights-of-way and other appurtenances used in connection with the beneficial use and enjoyment of the Land (collectively, the "Appurtenances").

2. **PURCHASE OF PROPERTY/EASEMENT:** Subject to the terms and conditions of this Agreement, Seller agrees to sell and Buyer agrees to purchase the **Property/Easement**.

2.1 **Purchase Price:** The total purchase price for the **Property/the Easement** is _____ and No/100 Dollars (US \$ _____ .00) ("Purchase Price"). The Purchase Price is payable at Closing in cash.

2.2 **Earnest Money:** Upon execution of this Agreement, Buyer will execute a promissory note in favor of Seller in the amount of _____ and No/100 Dollars (\$ _____ .00), in the form attached hereto as **Appendix "B"** (the "Note") and incorporated herein by this reference, and deposit the Note with Pacific Northwest Title Insurance Company ("Escrow Holder") to be held in escrow as earnest money. The Note shall be due on delivery of Buyer's notice that the contingencies described in Section 4 have been satisfied or removed. The funds deposited in payment of the Note (the "Deposit") shall be applied to the Purchase Price at Closing. Escrow Holder shall place the Deposit in an interest bearing money market-type account. Interest shall be for Buyer's benefit. The Note or Deposit (plus interest), as applicable, shall be refunded to Buyer unless all of Buyer's conditions hereunder are satisfied.

IN THE EVENT BUYER FAILS, WITHOUT LEGAL EXCUSE, TO COMPLETE THE PURCHASE OF THE **PROPERTY/EASEMENT** AS CONTEMPLATED IN THIS AGREEMENT, THE DEPOSIT SHALL BE FORFEITED TO SELLER AS LIQUIDATED DAMAGES TO BE THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO SELLER. Buyer and Seller agree that the liquidated damages represent a reasonable sum considering all of the circumstances existing on the date of this Agreement and represent a reasonable



estimate of the losses that Seller will incur if Buyer fails to purchase the **Property/Easement** after all conditions precedent to Buyer's performance have been completely satisfied in Buyer's sole and absolute discretion.

3. TITLE:

3.1 Title & Conveyance: At Closing, Seller will execute and deliver to Buyer a [statutory warranty deed/special warranty deed] conveying good and marketable fee simple title to the **Property/Easement** free and clear of all defects or encumbrances done or suffered by Seller except for the lien of real estate taxes and drainage service charges and other governmental assessments not yet due and payable and those defects and/or encumbrances (if any) accepted by Buyer as Permitted Exceptions pursuant to Section 3.3. Seller shall approve the form of the deed(s), including any Deed of Conservation Easement, provided that Seller may withhold its approval only to the extent that such deed(s) contain(s) representations, warranties or covenants or other obligations on the part of Seller that exceed those provided by Seller under this Agreement. Buyer shall provide the forms of deed(s) to Seller for its review and approval no later than the end of Buyer's feasibility contingency provided in Section 4.2. If Seller objects to the form of the deed(s) on a basis allowed for herein and Buyer revises the form of the deed(s) to remove such objection, Seller shall grant its approval of the form.

3.2 Title Insurance: Buyer shall obtain a title insurance commitment (the "Commitment") issued by the Pacific Northwest Title Insurance Company (the "Title Company"), showing marketable title to the Property vested in Seller. At Closing, Buyer shall receive an owner's Standard ALTA (1970 with 1984 revisions) policy of title insurance, dated as of the Closing date and insuring Buyer in the amount of the Purchase Price against loss or damage by reason of defect in the title to the Property subject only to the printed exclusions appearing in the policy form and any Permitted Exceptions (as defined below).

3.3 Review of Title: Buyer shall notify Seller, by the end of Buyer's Feasibility Contingency Period, as defined in Section 4, either (a) that Buyer has approved the Commitment and thereby intends to proceed with the purchase of the **Property/Easement** or (b) of those exceptions that Buyer objects to and the reason for such objection (any exceptions contained within the Commitment not so objected to shall thereafter be "Permitted Exceptions"). Buyer's failure to object to any title exception within the time stated above shall be deemed an approval of the quality of title reflected in the Commitment. Thereafter, any liens, leases, encumbrances, easements, restrictions, conditions, covenants, rights-of-way and other matters affecting title to the Property that are created and which may appear of record or be revealed by survey or otherwise after the date of the Commitment but before the Closing date (collectively, "Intervening Exceptions") shall be subject to Buyer's approval and Buyer shall have ten (10) Working Days after notice in writing of any Intervening Exception, together with a description thereof and a copy of the instrument creating or evidencing the Intervening Exception, if any, to either accept it (whereupon the Intervening Exception shall be a Permitted Exception) or submit written objection and the reasons therefore to Seller.



Seller shall have five (5) Working Days following receipt from Buyer of any notice of objection(s) to notify Buyer in writing of any such objections which Seller does not intend to attempt to eliminate. The failure of Seller to respond in writing within the time stated shall be deemed an agreement by Seller to attempt to remove Buyer's objection(s) by modification or removal of the exception(s) objected to by Buyer. If Seller notifies Buyer that Seller does not intend to eliminate any exception to which Buyer has objected, Buyer shall then have the right, exercisable by providing written notice thereof to Seller within five (5) Working Days of its receipt of written notice from Seller, to either (a) terminate this Agreement, in which event neither party shall have any further right or obligation with regard to the purchase and sale of the **Property/Easement**, or (b) waive its objection to that exception. Seller shall exercise its reasonable efforts to remove by Closing any and all exceptions (other than those it has notified Buyer that it will not attempt to eliminate) to which Buyer has objected. If Seller cannot remove such exception after exercising such reasonable efforts, it shall notify Buyer thereof and Buyer may either go forward and purchase the **Property/Easement** subject to such exception or terminate this Agreement. In the event Buyer so elects to terminate this Agreement, the obligation of Seller to sell, and Buyer to buy, the **Property/Easement** as herein provided shall terminate and the Deposit and the interest accrued thereon shall be returned to Buyer.

4. CONTINGENCIES:

4.1 Buyer's Feasibility Contingency: The sale of the **Property/Easement** to Buyer is contingent on Buyer's inspection and satisfaction with the Property, including without limitation title review and the results of an Environmental Site Assessment, the suitability of the **Property/Easement** for Buyer's intended uses in Buyer's sole and absolute discretion, including without limitation the ability of Cascade to assign this Agreement and the rights, title and interest herein, or a portion thereof, to the City on terms and conditions acceptable to Cascade. Within five (5) Working Days of the Effective Date of this Agreement, Seller shall make available to Cascade for inspection and copying (at Seller's sole expense) copies of reports, maps, plans and studies, to the extent currently in its possession, concerning the Property. Seller hereby grants Buyer's employees, agents and/or contractors and the City and its employees, agents and/or contractors, as Buyer's invitee, a right of entry onto the Property for any site inspections performed in connection with such Environmental Site Assessment. Buyer's inspections may include testing, at Buyer's expense, for the presence or absence of Hazardous Substances (as defined herein) on, under or in the Property. In connection with such inspections, Buyer agrees to hold harmless, indemnify and defend Seller, its officers, agents and employees, from and against all claims, losses, or liability, for injuries, sickness or death of persons, including employees of Buyer, to the extent caused by or arising out of any act, error or omission of Buyer, its officers, agents, contractors, subcontractors and/or employees and the City and its officers, agents, contractors, subcontractors and/or employees, as Buyer's invitee, in entering the Property for the above purposes; provided, however, that in no event shall the Buyer or its invitee be liable, or required to indemnify Seller on account of any pre-existing soil, groundwater or other



environmental contamination on the Property or any other physical condition in, on, over, under or concerning the Property.

4.2 Buyer's Assignment Contingency: The sale of the **Property/Easement** to Buyer is contingent on CLC's assignment of this Agreement and assumption of the Agreement by the City.

4.3 Removal of Buyer's Contingencies: Buyer shall have _____ () Working Days from the Effective Date of this Agreement to remove the feasibility contingency in Section 4.1 (the "Feasibility Contingency Period"); provided, however, that Buyer may extend the Feasibility Contingency Period by an additional _____ () Working Days in the event that its Phase I environmental site assessment recommends Phase II testing on the Property. Buyer shall have _____ () Working Days from the date of removal of Buyer's Feasibility Contingency to remove the assignment contingency in Section 4.2 (the "Assignment Contingency Period"). In the event that Buyer fails to remove by written notice to Seller such feasibility contingency or assignment contingency by the date provided for above, this Agreement shall terminate automatically, and neither party shall have any further rights, obligations or liabilities hereunder.

5. RISK OF LOSS; MAINTENANCE OF REAL PROPERTY: Seller will bear the risk of loss of or damage to the Property prior to Closing. In the event of such loss or damage to the Property, or a portion thereof, Seller shall promptly notify Buyer thereof and Buyer may, in its sole discretion, terminate this Agreement by giving notice of termination to the Seller. Notwithstanding Buyer's right to terminate this Agreement, in the event of loss of or damage to all or a portion of the Property, Buyer may elect to purchase the **Property/Easement** in the condition existing on the date of Closing; provided, however, that unless otherwise agreed, Seller shall not be liable to restore the Property or pay damages to Buyer by reason of such loss or damage.

Seller agrees at all times to continue to maintain the Property in compliance with all applicable laws. Seller shall maintain all casualty, liability and hazard insurance currently in force with respect to the Property through the Closing without diminution in coverage.

6. ASSIGNMENT: Cascade may assign this Agreement and the rights herein, or a portion thereof, to the City. In the event of a complete assignment by Cascade and assumption by the City of all of Cascade's rights and obligations under this Agreement, Cascade shall have no further rights, obligations or liabilities under this Agreement.

7. SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS: Seller represents, warrants and covenants to Buyer as of the Effective Date of this Agreement and again as of the date of Closing that:

7.1 Execution, Delivery and Performance of Agreement, Authority: Seller, and the person(s) signing on behalf of Seller, has full power and authority to execute this



Agreement and perform Seller's obligations, and if Seller is a corporation, all necessary corporate action to authorize this transaction has been taken. Based on Seller's actual knowledge, no approval, consent, order or authorization of or designation, registration or filing (other than for personal purposes) with any governmental authority or other third party is required in connection with the due and valid execution and delivery of this Agreement by Seller to allow compliance with the provisions hereof by Seller and consummation of the transaction contemplated hereby by Seller. Based on Seller's actual knowledge, the execution, delivery and performance of this Agreement and all documents executed by Seller that are to be delivered to Buyer by Closing will not violate any provision of any law, rule, regulation, order, writ, judgment, decree or award to which Seller is a party or which is presently in effect and applicable to Seller. This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with the terms hereof.

7.2 No Actions or Proceedings: Based on Seller's actual knowledge, there is no action, suit, proceeding or investigation pending that would become a cloud on the title to the Property or any portion thereof or that questions the validity or enforceability of the transaction contemplated by this Agreement or any action taken pursuant hereto in any court or by any federal, district, county or municipal department, commission, board, bureau, agency or other governmental instrumentality.

7.3 No Condemnation: Based on Seller's actual knowledge, neither the whole nor any portion of the Property is subject to temporary requisition or use by governmental authority or has been condemned or taken in any proceeding similar to a condemnation proceeding. To Seller's actual knowledge, no such proceeding is contemplated.

7.4 No Notices: Seller has no actual knowledge, nor has Seller received any written notice, of any violations of law, municipal ordinance or other legal requirements of governmental authorities in respect to the Property. Seller authorizes Buyer to make the necessary searches for any such violations. Seller has not received any written notices from any federal, state or municipal authority of any lawsuits or judgments relating to violations of the Property, and Seller will promptly notify Buyer if it receives such notice.

7.5 No Material Defect; No Adverse Changes: Seller has no actual knowledge of any material defect in the Property or adverse change in the physical condition of the Property.

7.6 No Default or Breach: Seller has received no written notice of any default or breach by Seller under any covenants, conditions, restrictions, rights-of-way, easements, insurance policies, service contracts, warranties, guaranties or leases affecting the Property or any portion thereof.

7.7 Taxes and Assessments: Other than the amounts disclosed by the Commitment, to Seller's actual knowledge, no other property taxes have been or will be



assessed against the Property for the current tax year and no general or special assessments or charges have been levied, assessed or imposed on or against all or any part of the Property.

7.8 Environmental Compliance; Contamination: Seller has not intentionally withheld any material information concerning environmental matters with respect to the Property. To Seller's actual knowledge (i) there has been no generation, deposit, manufacturing, refinement, transport, treatment, storage, handling, transfer, disposal, production, processing or release of Hazardous Substances on or under the Property at any time during Seller's ownership or use thereof except as in compliance with then applicable law; and (ii) there are no underground storage tanks on the Property nor have underground storage tanks been removed from the Property. Seller has no actual knowledge that would lead it to believe that there are any Hazardous Substances on or under the Property. Seller will not use, generate, manufacture, produce, store, release, discharge or dispose of on, under, above or about the Property, or transport to or from the Property, any Hazardous Substance or authorize any other person or entity to do so, prior to Closing. Seller has no actual knowledge of any substances or conditions on the Property that may support a claim or cause of action against the owner of the Property, whether by a governmental agency or body, private party or individual, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), the Washington State Model Toxics Control Act, ch. 70.105D Revised Code of Washington ("RCW"), as amended ("MTCA"), or any other federal, state or local environmental statutes, regulations, ordinances or regulatory requirements, or amendments thereto. For purposes of this Agreement, the terms Hazardous Substances shall mean: "hazardous substance" as defined in CERCLA; "hazardous waste" as defined by RCRA; "hazardous substance" as defined in MTCA; hazardous wastes, hazardous materials, hazardous substances, toxic waste, toxic materials, or toxic substances as defined in state or federal statutes or regulations; asbestos-containing materials, polychlorinated biphenyls; radioactive materials, chemicals known to cause cancer or reproductive toxicity; petroleum products, distillates or fractions; any substance the presence of which is prohibited by statute or regulation; and any substance for which any statute or regulation requires a permit or special handling in its use, collection, storage, treatment or disposal.

7.9 Fees and Commissions: Seller shall pay for any broker's or other commissions or fees incurred by Seller in connection with the sale of the Property, and Seller shall indemnify and hold Buyer harmless from all such claims for commissions and/or fees.

7.10 Title: Seller warrants that it has good and sufficient title to the Property, free from all encumbrances done or suffered from Seller except for the lien of real estate taxes and drainage service charges not yet due and payable and the exceptions provided for in the Commitment.

7.11 Agreement to Transfer or Encumber: Seller has not committed nor obligated itself in any manner whatsoever to sell, lease or encumber the Property or any interest therein to any party other than Buyer.



7.12 No Seller Bankruptcy: No bankruptcy, insolvency, rearrangement or similar action involving Seller or the Property, whether voluntary or involuntary, is pending, threatened by a third party, or contemplated by Seller.

In the event that Seller has actual knowledge that any of the representations contained in this Section 7 are untrue as of the date of Closing as a result of information received by Seller or become known at any time prior to Closing by Seller to be untrue, Seller shall promptly notify Buyer in writing and Buyer may elect to terminate this Agreement by written notice to Seller, and all obligations of Seller and Buyer hereunder shall terminate and be of no further force or effect.

8. BUYER'S REPRESENTATIONS AND WARRANTIES:

Buyer represents, warrants and covenants to Seller as of the Effective Date and again as of Closing:

8.1 Organization. Cascade is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of Washington, with the full right, power and authority to take title to the **Property/Easement** and to enter into and otherwise perform and comply with the terms of this Agreement.

8.2 Execution, Delivery and Performance of Agreement, Authority. The execution, delivery and performance of this Agreement by Buyer (i) is within the powers of Buyer as a nonprofit corporation, (ii) has been or will be on or before Closing, duly authorized by all necessary action of Buyer's corporate authority, and (iii) does not and will not violate any provision of any law, rule, regulation, order, writ, judgment, decree or award to which Buyer is a party or which is presently in effect and applicable to Buyer. This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with the terms hereof.

8.3 Broker. No broker, finder, agent or similar intermediary has acted for or on behalf of Buyer in connection with this Agreement or the transactions contemplated hereby, and no broker, finder, agent, or similar intermediary is entitled to any broker's, finder's or similar fee or commission in connection with this Agreement based on any agreement, arrangement, or understanding with Buyer or any action taken by Buyer. Buyer shall pay for any broker's or other commissions or fees incurred by Buyer in connection with the sale of the Property, and shall indemnify and hold Seller harmless from all such claims for commissions and/or fees.

8.4 No Buyer Bankruptcy: No bankruptcy, insolvency, rearrangement or similar action involving Buyer, whether voluntary or involuntary, is pending or contemplated by Buyer or, to the best knowledge of Buyer, is threatened by a third party,.



In the event that Cascade assigns this Agreement and the rights herein, or a portion thereof, to the City and the City accepts such assignment, the City shall be deemed to make the representations, warranties and covenants in Sections 8.1 through 8.4, except that such representations, warranties and covenants shall recognize that the City is a municipal corporation and not a nonprofit corporation, that the City has legislative and not corporate authority, that the City is assuming rather than executing this Agreement, and that the City makes such representations, warranties and covenants as of the date of assignment and Closing and not as of the Effective Date.

9. INDEMNIFICATION:

9.1 Seller's Indemnification: Seller agrees to indemnify, defend, and hold harmless Buyer, its employees, agents, heirs, successors and assigns, from and against any and all damage, claim, liability, or loss, including reasonable attorney's and other fees arising out of or in any way connected to the following: (a) the breach of any representation, warranty or agreement of Seller set forth in this Agreement, including without limitation the environmental representations and warranties contained in Section 7.8; and (b) any injuries to persons or property from any cause other than the negligence of Buyer occasioned in whole or in part by any acts or omissions of the Seller, its representatives, employees, contractors or suppliers that occurred before Closing. Such duty of indemnification shall include, but not be limited to damage, liability, or loss pursuant to all federal environmental laws, Washington State environmental laws, strict liability and common law. The indemnity in this Section 9.1 shall survive Closing.

9.2 Buyer's Indemnification: Buyer agrees to indemnify, defend, and hold harmless Seller, its employees, agents, heirs, successors and assigns, from and against any and all damage, claim, liability, or loss, including reasonable attorney's and other fees arising out of or in any way connected to: (a) the breach of any representation or warranty severally made by Buyer and contained herein; and (b) to the extent allowed by law, any injuries to persons or property from any cause other than the negligence of Seller occasioned in whole or in part by any acts or omissions of the Buyer, its representatives, employees, contractors or suppliers that occurred after Closing. The indemnity in this Section 9.2 shall survive Closing.

10. CLOSING:

10.1 Time for Closing: The Closing will occur not later than within __ (days) of notice of removal of Buyer's assignment contingency in Section 4.2. The Closing shall proceed under escrow instructions of Buyer and Seller. Buyer and Seller shall deposit in escrow with the Closing Agent all instruments, documents and moneys necessary to complete the sale in accordance with this Agreement. As used in this Agreement, "Closing" and "date of Closing" means the date on which all appropriate documents are recorded and proceeds of the sale are available for disbursement to Seller. The Closing Agent shall be:



Pacific Northwest Title Insurance Company

10.2 Costs: Seller and Buyer shall each pay their own attorneys' fees. Buyer shall otherwise pay all closing costs, including the real estate transfer excise taxes, escrow fees, title insurance premium and the cost of recording the deed(s).

10.3 Proration of Taxes, Etc. Seller shall be responsible for paying real property taxes, general assessments, compensating taxes, utilities and operating expenses relating to the Property though Closing. Any special assessments against the Property in existence as of the date of Closing shall be paid in full by Seller. All expenses of the Property, including, but not limited to, real property taxes, utility charges, annual permits and other expenses normal to ownership, use, operation and maintenance of the Property shall be prorated as of 12:01 a.m. on the date of Closing.

11. NOTICES: Any notices required herein shall be given to the Parties at the addresses listed below:

TO SELLER:

TO BUYER:

CASCADE LAND CONSERVANCY
615 SECOND AVE
SUITE 625
SEATTLE, WA 98104
ATTN: CHIP NEVINS
TELEPHONE: (206) 292-5907, EXT. 109
FACSIMILE NO.: (206) 292-4765

WITH A COPY TO:

WITH A COPY TO:
PRESTON GATES & ELLIS LLP
925 FOURTH AVENUE, SUITE 2900
SEATTLE, WASHINGTON 98104
ATTN: KONRAD J. LIEGEL
TELEPHONE: (206) 370-8385
FACSIMILE NO.: (206) 623-7022

AND, UPON ASSUMPTION OF THIS
AGREEMENT BY THE CITY, TO:

CITY OF SEATTLE
SEATTLE PUBLIC UTILITIES
700 FIFTH AVENUE, SUITE 4900
P.O. BOX 34018
SEATTLE, WASHINGTON 98124-4018
ATTN: CYNDY HOLTZ



TELEPHONE: (206) 386-1990
FACSIMILE NO.: (206) 684-0206

WITH A COPY TO:

CITY OF SEATTLE
SEATTLE PUBLIC UTILITIES
REAL PROPERTY SERVICES
P.O. BOX 30418
SEATTLE, WASHINGTON 98124-4018
ATTN: TERI HALLAUER

For Hand Delivery:

CITY OF SEATTLE
SEATTLE PUBLIC UTILITIES
810 THIRD AVENUE, SUITE 300
SEATTLE, WASHINGTON 98104
CITY OF SEATTLE
SEATTLE PUBLIC UTILITIES
ATTN: TERI HALLAUER
TELEPHONE: (206) 684-5971
FACSIMILE NO.: (206) 615-1215

Any party hereto may, by proper written notice to the other, designate such other address, or facsimile telephone number for the giving of notices as deemed necessary. All notices shall be deemed given on the day each such notice is personally delivered, transmitted by telecopy (with evidence of receipt), or delivered by overnight courier service, or on the third day following the day such notice is mailed if mailed in accordance with this Section.

12. DEFAULT; REMEDIES:

12.1 Specific Performance: This Agreement pertains to the conveyance of real property, the unique nature of which is hereby acknowledged by the Parties. Consequently, if Seller breaches or defaults under this Agreement or any of the representations, warranties, terms, covenants, conditions or provisions hereof, Buyer shall have, in addition to a claim for damages for such breach or default, and in addition and without prejudice to any other right or remedy available under this Agreement or at law or in equity, the right (a) to specific performance of this Agreement, or (b) to terminate this Agreement upon written notice without liability to Seller or Buyer.

12.2 Attorneys Fees: If any party brings an action or other proceeding against any other party to enforce any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement, or by reason of any breach or default hereunder or thereunder, the party prevailing in any such action or proceeding shall be paid all costs and reasonable attorney's fees by the other party, and in the event any judgment is obtained by the prevailing party all such costs and attorney's fees shall be included in the judgment.



13. **GENERAL:** This Agreement and its attached Appendices are the entire agreement of the Buyer and Seller with respect to the Property and supersede all prior or contemporaneous agreements between them, written or oral. This Agreement may be modified only in writing, signed by Buyer and Seller. Any waivers under this Agreement must be in writing. A waiver of any right or remedy in the event of a default will not constitute a waiver of such right or remedy in the event of any subsequent default. This Agreement is for the benefit of, and binding upon, Buyer and Seller and their heirs, personal representatives, successors and assigns. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision. The laws of the State of Washington shall govern this Agreement and all documents relating hereto. Time is of the essence in this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument. As used in this Agreement, "actual knowledge" of Seller means the actual knowledge, without additional inquiry, of those persons in the Seller's Law Department and Seattle Public Utilities who have participated in this transaction.

14. **WASTE; ALTERATION OF PROPERTY:** Seller shall not, prior to Closing, commit waste on the Property, nor shall Seller remove trees or other vegetation, coal, minerals or other valuable materials nor shall Seller substantially alter the surface or subsurface of the Property without the express written consent of Buyer.

15. **SURVIVAL OF WARRANTIES AND INDEMNITIES:** The terms, covenants, representations, warranties and indemnities contained herein shall not merge in the deed of conveyance, but shall survive for ten (10) years following Closing.

16. **TAX DEFERRED EXCHANGE:** Seller may elect to close this transaction as a part of a tax-deferred exchange under Section 1031 of the Internal Revenue Code, in which case Buyer agrees to sign all documents necessary for such exchange, and otherwise cooperate therewith, provided only that Buyer shall not be required to incur any additional expense or liability or acquire title to any property.

17. **RECITALS AND APPENDICES:** All recitals and Appendices to this Agreement are incorporated herein by this reference.

18. **EFFECTIVE DATE:** This Agreement is effective as of _____, 200_ (the "Effective Date").

APPENDICES: Appendix A, Legal Description of the Real Property
Appendix B, Earnest Money Note
[Appendix C, Conservation Easement]

Signed in duplicate original.



BUYER: Cascade Land Conservancy, a
Washington nonprofit corporation

SELLER:

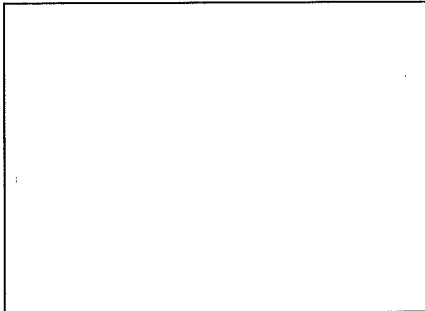
BY: _____
TITLE: _____



STATE OF WASHINGTON)
) ss:
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the _____ to be the free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____.



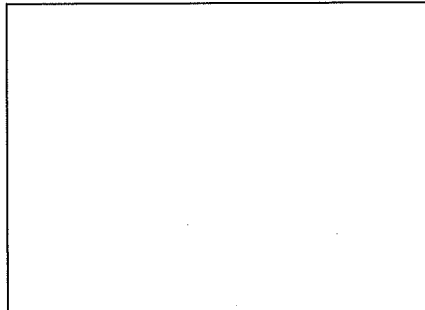
(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

STATE OF WASHINGTON)
) ss:
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the _____ to be the free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____.



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____



APPENDIX A
LEGAL DESCRIPTION OF THE PROPERTY



APPENDIX B

EARNEST MONEY NOTE

\$ _____ .00
_____, 200_

FOR VALUE RECEIVED, CASCADE LAND CONSERVANCY, a Washington nonprofit corporation ("Maker") hereby promises to pay to the order of _____, _____ ("Payee"), c/o _____ Title Insurance Company, _____, _____, WA _____, the principal sum of _____ and No/100 Dollars (\$ _____ .00). This Note shall be payable in accordance with the terms of that certain Purchase and Sale Agreement ("Agreement") of even date herewith between Maker as buyer and Payee as seller.

If this Note is not paid when due, such failure shall constitute a default hereunder and, at the option of Payee, without prior notice, the entire indebtedness hereby represented shall immediately become due and payable and bear interest at the rate of fifteen percent (15%) per annum until this Note is fully paid.

If suit is brought on this Note, or if it is placed in the hands of an attorney for collection, after any default, Maker promises to pay reasonable costs of collection, including attorneys' fees incurred thereby.

Maker and all endorsers waive demand, presentment and protest and waive notice of demand, protest, dishonor and nonpayment. This Note shall be governed by Washington law.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

CASCADE LAND CONSERVANCY,
a Washington nonprofit corporation

By: _____
Name: _____
Title: _____



[APPENDIX C

CONSERVATION EASEMENT]



**EXHIBIT E TO AGREEMENT FOR ACQUISITION AND MANAGEMENT
OF FISH HABITAT**

FORM OF NOTICE OF FEASIBILITY
Fish Habitat Land Acquisition Program

NOTICE OF FEASIBILITY

Cascade Land Conservancy ("CLC") hereby notifies **Seattle Public Utilities** of CLC's intent to remove feasibility in a purchase and sale agreement to acquire the following:

Parcel #: _____

Feasibility Contingency Period ends on: _____

Date of anticipated closing is: _____

DATE REQUIRED FOR SPU'S RESPONSE: _____

The following items are attached/included for your review/records:

- ☐ Executed Purchase and Sale Agreement
- ☐ Appraisal
- ☐ Environmental Assessment
- ☐ Title Commitment and Review Summary/Recommendations

The following steps have been completed:

- ☐ Appraisal – Date: _____; Value: _____
- ☐ Offer made
City approval required and provided on _____
- ☐ City approved the Purchase and Sale Agreement on _____
Date of executed Purchase and Sale Agreement: _____
- ☐ Title Review – Date: _____
- ☐ Site Inspection for Environmental Assessment – Date: _____



- ☐ Phase 1 Environmental Assessment was completed on _____
- ☐ The Property was found to be free from hazards for purposes of transfer
- ☐ The City directed CLC to proceed with a Phase 2 Environmental Assessment
- ☐ Phase 2 Assessment showed no remediation necessary
- ☐ The following remediation activities were conducted:
- _____

CLC recommends removal of the Feasibility Contingency as follows:

Comments:

Prepared by:

Dated this _____ day of _____, 20____.



**EXHIBIT F TO AGREEMENT FOR ACQUISITION AND MANAGEMENT
OF FISH HABITAT**

FORM OF NOTICE OF ASSIGNMENT

Fish Habitat Land Acquisition Program

NOTICE OF ASSIGNMENT

Cascade Land Conservancy ("CLC") hereby notifies Seattle Public Utilities ("SPU") of CLC's intent to assign to the City of Seattle CLC's interest in a purchase and sale agreement to acquire [fee ownership of] [a conservation easement in] the following property:

Parcel #: _____

Anticipated date of closing is: _____

DATE REQUIRED FOR SPU'S RESPONSE: _____

The following items are attached/included for your review:

- ☐ Final Assignment of Purchase and Sale Agreement for execution
- ☐ Final Deed
- ☐ Final City Conservation Easement for execution (if appropriate)
- ☐ Final Landowner Conservation Easement for execution (if appropriate)
- ☐ Final City Stewardship Assignment for execution (if appropriate)
- ☐ Escrow Instructions
- ☐ Preliminary Escrow Settlement Statement
- ☐ Present Conditions Report, including any recommended Immediate Property Management Actions and their anticipated Costs and Expenses

The following steps have been completed:

- ☐ By approving the Notice of Feasibility, the City provided written authorization for CLC to remove the Feasibility Contingency- Date: _____
- ☐ Feasibility Contingency lifted – Date: _____

CLC requests approval of the Assignment and that \$ _____ (Purchase Price of \$ _____ (minus Earnest Money Deposit), Closing Costs of \$ _____,



and Assignment Fee [consisting of Earnest Money Deposit of \$_____, CLC Out-of-Pocket Costs of \$_____, and CLC Administration Costs of \$_____], be deposited by SPU into Escrow at:

(address shown on Settlement Statement) by: _____, 200_.

CLC has attached an invoice containing documentation in support of the Assignment Fee.

Comments:

[CLC desires to pay the CLC Portion of \$_____ to acquire a perpetual conservation-stewardship easement in the above-described property. If SPU accepts the Assignment, CLC shall deposit the CLC Portion into Escrow by _____, 200_.]

[Other]

Prepared by: _____
Cascade Land Conservancy

Date: _____, 20__

SPU approves the Assignment and other documents included with this Notice of Assignment. SPU shall make the requested deposit into Escrow. [SPU [approves] [does not approve] the post-closing immediate property management measures described in the Present Conditions Report [and] [or] the request for payment of costs in such Report.]

Seattle Public Utilities

Name: _____

Title: _____

Date: _____



**EXHIBIT G TO AGREEMENT FOR ACQUISITION AND MANAGEMENT
OF FISH HABITAT**

FORM OF ASSIGNMENT OF REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS ASSIGNMENT OF REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Assignment") is entered into by and between CASCADE LAND CONSERVANCY, a Washington nonprofit company ("Assignor") and the CITY OF SEATTLE, a municipal corporation of the State of Washington acting by and through Seattle Public Utilities("Assignee") (collectively, the "Parties").

RECITALS

A. Assignor is the Buyer under that certain Real Estate Purchase and Sale Agreement ("Purchase Agreement"), dated _____, 200__, for the purchase and sale of certain real property located in King County, Washington, as legally described therein (the "Property"), which Agreement is attached hereto as Appendix "A".

B. In accordance with the Agreement for Acquisition and Management of Fish Habitat, dated as of _____, 2005 between Assignor and Assignee ("Fish Habitat Agreement"), Assignor desires to assign all of its right, title and interest in the Purchase Agreement to Assignee.

AGREEMENT

NOW, THEREFORE, intending to be legally bound and for good and valuable consideration, including the mutual covenants and promises of the parties, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

1. Assignment.

1.1 In accordance with the Fish Habitat Agreement, Assignor hereby assigns all of its right, title and interest in the Purchase Agreement to Assignee in consideration of the following:

1.1.1 An assignment fee of \$_____, consisting of CLC Out-of-Pocket Costs, CLC Administrative Costs and the Earnest Money Deposit, each as defined in the Fish Habitat Agreement (collectively, the "Assignment Fee") to be paid to Assignor at closing on the [Property] [conservation easement over the Property];

1.1.2 A [term conservation-stewardship easement] [perpetual conservation-stewardship easement] [stewardship assignment], substantially in the form attached to this Assignment as "Appendix B" to be conveyed to Assignor at closing on the [Property] [conservation easement on the Property]; [provided, that in accordance with the Fish Habitat Agreement Assignee has deposited into escrow \$_____, representing the CLC Portion, as defined in said Agreement, for payment to Assignor at closing;] and



1.1.3 Subject to provisions of the Fish Habitat Agreement and the easement or assignment, the form of which is attached as "Appendix B", an annual stewardship fee of Three Thousand and No/100 Dollars (\$3,000.00) (in 2005 dollars), provided that in no event shall such annual payment be required after December 31, 2050.

1.2 Assignee hereby assumes all of the obligations of Assignor under the Purchase Agreement; Assignee represents and warrants as set forth in Section 8 of the Purchase Agreement in accordance with the last paragraph of that Section.

2. Assignee's address for notices under Section 11 of the Purchase Agreement is:

City of Seattle

Seattle Public Utilities

If by U.S. Postal Service: P.O. Box 30418
Seattle, Washington 98124-4018

If by hand delivery: 700 Fifth Avenue, Suite 4900
Seattle, Washington 98124-4018

Attn: Cyndy Holtz

Telephone No.: (206) 386-1990

Facsimile No.: (206) 684-0206

With a copy to:

City of Seattle

Seattle Public Utilities

Real Property Services

If by U.S. Postal Service: P.O. Box 30418
Seattle, Washington 98124-4018

If by hand delivery: 810 Third Avenue, Suite 300
Seattle, Washington 98104

Attn: Teri Hallauer

Telephone No.: (206) 684-5971

Facsimile No.: (206) 615-1215

3. Representations and Warranties. Assignor and Assignee each represent and warrant, as of the effective date of this Assignment that it (a) has all requisite authority necessary to enter into this Assignment and to complete the transactions contemplated herein, (b) has duly authorized and executed this Assignment, (c) the person signing below has the requisite authority to bind the party on whose behalf he or she is signing, and (iv) assuming due authorization and execution by the other party hereto, this Assignment is a legal, valid and binding obligation of the party executing this Assignment, enforceable in accordance with its terms.

4. General Terms



4.1 Survival. The covenants, agreements, representations, and warranties made in this Assignment shall survive the closing under the Agreement.

4.2 Entire Agreement. This Assignment contains the entire integrated agreement of the Parties, including all of the covenants and conditions between the parties, with respect to the subject matter of this Assignment, other than those contained in the Fish Habitat Agreement, and supersedes all prior correspondence, agreements, and understandings, both oral and written. In the event of conflict between the terms of this Assignment and the Fish Habitat Agreement, the terms of the Fish Habitat Agreement shall control.

4.3 Modification. This Assignment may be modified only by mutual agreement in writing.

4.4 Default. In the event of default under this Assignment by a party to this Assignment, the other party to this Assignment shall be entitled, in addition to all other remedies, to seek specific performance of the defaulting party's obligations hereunder. In the event of litigation between the Parties arising out of or relating to this Assignment, the prevailing party, in addition to all other rights and remedies, shall be entitled to recover reasonable attorneys' fees, costs and litigation-related expenses from the non-prevailing party.

4.5 Authority. Each undersigned representative of the parties certifies that he or she is fully authorized to enter into the terms and conditions of this Assignment and to legally execute, and bind such party to, this Assignment.

4.6 Captions. The captions of this instrument are solely for the convenience of the parties and are not a part of this Assignment.

4.7 Applicable Law. This Assignment shall be governed by the laws of the State of Washington.

4.8 Counterparts. This Assignment may be executed in any number of counterparts, or by facsimile copies, any one of which shall be deemed an original and all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Assignment by signing any such counterpart.

4.9 Recitals. Each recital, appendix and schedule set forth above is fully incorporated into this Assignment.

4.10 Effective Date. The effective date of this Assignment shall be the earliest date by which both Assignor and Assignee have executed this instrument.

[5. Post-Closing Immediate Property Management Costs. Assignor agrees to undertake the post-closing management measures on the Property described in "Schedule 1" attached to this Assignment in accordance with the budget and schedule described in "Schedule 1" ("Immediate Property Management Action"). Assignor shall be paid for its costs associated with undertaking



the Immediate Property Management Action ("Immediate Property Management Action Costs") as provided for in Section 4.B of the Fish Habitat Agreement.]

Agreed to and accepted this ____ day of _____, 200_.

Assignor:

CASCADE LAND CONSERVANCY,
a Washington nonprofit corporation

By _____
Name _____
Its _____

Assignee:

THE CITY OF SEATTLE
Seattle Public Utilities

By _____
Name _____
Its _____



Appendix A

REAL ESTATE PURCHASE AND SALE AGREEMENT



APPENDIX B

[CONSERVATION EASEMENT] [STEWARDSHIP ASSIGNMENT]



FISCAL NOTE FOR CAPITAL PROJECTS ONLY

Department:	Contact Person/Phone:	DOF Analyst/Phone:
SPU	Cyndy Holtz/386-1990	Barbara Gangwer/615-0768

Legislation Title: AN ORDINANCE relating to the acquisition and management of real property and property interests on the Cedar River below Landsburg Dam, in King County; authorizing Seattle Public Utilities to acquire specified properties or conservation easements and to accept applicable deeds; authorizing Seattle Public Utilities to enter into an agreement with Cascade Land Conservancy for land acquisition and management services; and authorizing Seattle Public Utilities to convey easements or stewardship assignments in connection with the Conservancy's management responsibilities.

Summary and background of the Legislation:

Background:

One of the City's commitments under the Cedar River Habitat Conservation Plan is to contribute \$5.5 million to acquire, restore, enhance and/or protect high quality spawning, rearing or refuge habitat for anadromous fish species, and the natural features and processes sustaining such habitat, along the mainstem of the lower Cedar River below Landsburg Dam over the next two to five years. *Preservation* of properties containing fish habitat is regarded as the highest priority (relative to habitat *restoration*) given the threat of development in the lower Cedar River area.

Under the proposed agreement with Cascade Land Conservancy (CLC), approximately sixteen fee-ownership or conservation easement parcels are expected to be acquired and made available under the agreement with CLC. CLC, on behalf of the City, will negotiate individual purchases of City-designated properties that contain high-quality fish habitat or conservation easements on those properties over the next two to five years. The City will become the owner of the properties (or easement holder), and CLC will provide ongoing stewardship services. With respect to each property acquisition, the City will pay CLC no more than \$26,650 per parcel for acquisition services, which include CLC's in-house expenses (such as staff time for negotiating and completing land acquisition transactions), "out-of-pocket" expenses (such as appraisal, environmental site assessment, title report and closing costs), and preparation of a "present conditions report" that documents the site conditions and describes CLC's ongoing stewardship responsibilities. In addition, the City will pay CLC \$3,000 per year per parcel for land stewardship services.

The City is obligated to protect these lands for the term of the HCP, which terminates in 2050. To effectuate CLC's stewardship responsibilities, the City at closing will convey to CLC either a conservation-stewardship easement (if the landowner has sold the **property** to the City) or a perpetual stewardship assignment (if the landowner has sold a **conservation easement** to the City). For properties acquired in fee by the City, in consideration of the grant of a permanent

conservation-stewardship easement, CLC will pay the difference in value between a permanent easement and one that terminates in 2050 (for a nominal amount) and will provide perpetual stewardship services on *all* properties without charge after 2050. Therefore, after 2050, when the agreement terminates, the City will discontinue payment to CLC for stewardship, but CLC will continue to provide stewardship for the parcels

Project Name:	Project I.D.	Project Location:	Start Date:	End Date
Downstream Fish Habitat	C1607	Cedar River (below Landsburg Dam)	1 st Q 2001	4 th Q 2008

The Cedar River HCP Downstream Habitat Protection and Restoration project rolls up to the Downstream Fish Habitat program (C1607) in the Habitat Conservation Program budget control level. Council adopted this program in the 2005 Budget, legislation is not required to create this project.

- Please check any of the following that apply:

 This legislation creates, funds, or anticipates a new CIP Project. (Please note whether the current CIP is being amended through this ordinance, or provide the Ordinance or Council Bill number of the separate legislation that has amended/is amending the CIP.)

 This legislation does not have any financial implications. (Stop here and delete the remainder of this document prior to saving and printing.)

 X **This legislation has financial implications.** (Please complete all relevant sections that follow.)

Appropriations: This table should reflect appropriations that are a direct result of this legislation. In the event that the projects associated with this ordinance have appropriations that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below. Finally, if this legislation does not directly change an appropriation, but results in budget authority being moved within a Budget Control Level, or to a Budget Control Level (up to 10%), please explain in the Notes section below.

Fund Name and Number	Department	Budget Control Level*	2005 Appropriation	2006 Anticipated Appropriation
TOTAL				

*See budget book to obtain the appropriate Budget Control Level for your department.

Notes: Appropriation has been provided through the Downstream Fish Habitat program (C1607) in the 2005 Adopted Budget in the amount of \$6.508 million, of which \$6.143 million is for this program. There is \$766,000 of appropriation authority carried forward from 2004.

Spending Plan and Future Appropriations for Capital Projects: Please list the timing of anticipated appropriation authority requests and expected spending plan. In addition, please identify your cost estimate methodology including inflation assumptions, the projected costs of meeting applicable LEED standards, and the percent for art and design as appropriate.

Spending Plan and Budget	2005	2006	2007	2008	2009	2010	Total
Spending Plan	150	1,350	1,500	0	0	0	3,000
Current Year Appropriation							
Future Appropriations							

Notes: Funding for the project is included in 2005 Adopted Budget under the Downstream Fish Habitat program (C1607). Actual spending may deviate from projections because this program is based upon voluntarily sale of property from owners and does not use condemnation for acquisition, so spending projections are based upon estimates. The remainder of the budget appropriation will fund future acquisition and restoration projects (to be developed).

Funding source: Identify funding sources including revenue generated from the project and the expected level of funding from each source.

Funding Source (Fund Name and Number, if applicable)	2005	2006	2007	2008	2009	2010	Total
TOTAL							

Notes: Water revenues and bond proceeds will pay the costs of the contract. The water financial plan associated with the 2005 Adopted Budget anticipates the expenses for this project.

Bond Financing Required: If the project or program requires financing, please list type of financing, amount, interest rate, term and annual debt service or payment amount. Please include issuance costs of 3% in listed amount.

Type	Amount	Assumed Interest Rate	Term	Timing	Expected Annual Debt Service/Payment
TOTAL					

Notes: Water revenue bond financing already acquired to support this water CIP program. The bond proceeds are not separately allocated to individual projects.

Uses and Sources for Operation and Maintenance Costs for the Project: Estimate cost of one-time startup, operating and maintaining the project over a six year period and identify

each fund source available. Estimate the annual savings of implementing the LEED Silver standard. Identify key assumptions such as staffing required, assumed utility usage and rates and other potential drivers of the facility's cost.

O&M	2005	2006	2007	2008	2009	2010	Total
Uses							
Start Up							
On-going		12,000	36,000	40,000	40,000	40,000	168,000
Sources (itemize)							

Notes: The funding source of ongoing O&M for land stewardship is the water fund revenues and SPU anticipates the authority will be included in the 2006 Proposed O&M Budget. Acquisitions will be made throughout 2005 and 2006, and beyond, if necessary. The stewardship costs will be prorated according to when during the year the properties are acquired. The annual stewardship fee the City will pay to CLC is \$3,000 per parcel.

Periodic Major Maintenance costs for the project: Estimate capital cost of performing periodic maintenance over life of facility. Please identify major work items, frequency.

Major Maintenance Item	Frequency	Cost	Likely Funding Source
N/A			
TOTAL			

Funding sources for replacement of project: Identify possible and/or recommended method of financing the project replacement costs.

--

Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE

Impact: This table should only reflect the actual number of positions created by this legislation. In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below the table.

Position Title and Department*	Fund Name	Fund Number	Part-Time/ Full Time	2005 Position s	2005 FTE	2006 Positions**	2006 FTE**
N/A							
TOTAL							

* List each position separately

** 2006 positions and FTE are total 2006 position changes resulting from this legislation, not incremental changes. Therefore, under 2006, please be sure to include any continuing positions from 2005.

Notes:

- **Do positions sunset in the future?** *(If yes, identify sunset date):*
- **What is the financial cost of not implementing the legislation:** *(Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented):*

In exchange for the implementation of the HCP commitments, the Federal Services (US Fish and Wildlife and NOAA Fisheries) issued Incidental Take Permits to the City. These permits provide the City with assurance from the Federal Agencies that it is addressing the requirements of the Endangered Species Act (ESA) for its water supply, hydroelectric and land management activities in the watershed. If the City chose not to meet any one of the HCP commitments, it risks losing the Incidental Take Permits, and, therefore, its coverage under the ESA. ESA coverage is important to the City because it protects the City from potential legal action taken by agencies or private citizens. The City could pursue re-negotiating with the Services, but there would be a high degree of uncertainty about the outcome of such renegotiations.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives** *(Include any potential alternatives to the proposed legislation, including using an existing facility to fulfill the uses envisioned by the proposed project, adding components to or subtracting components from the total proposed project, contracting with an outside organization to provide the services the proposed project would fill, or other alternatives):*

The City could renegotiate, however, costs associated with renegotiating and the high degree of uncertainty about the outcome of such renegotiations is prohibitive.

- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future?)*

No

- **Other Issues** *(including long-term implications of the legislation):*

The long-term implication of this legislation is the City's obligation to pay CLC for providing stewardship services through the year 2050, the end of the term of the HCP. However, were CLC not to provide stewardship for the acquired properties, the City would either need to pay another entity to provide such services, or perform them itself at a cost. CLC has committed to provide stewardship beyond the term of the HCP at its own expense in perpetuity.

Please list attachments to the fiscal note below:



City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

August 15, 2005

Honorable Jan Drago
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Drago:

I am pleased to transmit the attached proposed Council Bill that allows Seattle Public Utilities to acquire and manage real property and property interests on the Cedar River below Landsburg Dam. Although the upper two-thirds of the Cedar River Watershed under City ownership is protected and managed as an ecological reserve, the lower one-third, stretching 22 miles from the Landsburg Diversion Dam to the mouth at Renton, is under multiple ownerships and jurisdictions, and has been significantly developed over the decades. To date, approximately 64 percent of the stream course in the lower Cedar River has been armored by levees and revetments, and some of the river has been rechanneled. This manipulation has resulted in loss of salmon habitat and has contributed to the decline of salmon populations in the Cedar River basin.

The Cedar River Habitat Conservation Plan (HCP), approved by the Council on April 24, 2000, includes \$5.5 million for the restoration and protection of habitat in the lower third of the Cedar River below the Landsburg Diversion Dam. SPU's approach to habitat protection and restoration in this area is to prevent further degradation of the few, last, best remaining lands that provide high-quality habitat. Adoption of this ordinance will allow the City to enter into an agreement with Cascade Land Conservancy (CLC) under which CLC, on behalf of the City, will negotiate individual purchases of City-designated properties that contain high-quality fish habitat or conservation easements on those properties. The City will become the owner of the properties (or easement holder), and CLC will provide ongoing stewardship on the acquired lands. It is estimated that approximately 16 parcels will be acquired.

This legislation enables the City to fulfill its commitments regarding downstream habitat protection under the Cedar River HCP. In collaborating with CLC, whose "charitable mission is to protect our region's wild and open space lands to sustain the natural beauty and health of the environment, now and for generations to come," the City benefits from CLC's expertise in land preservation, and its interest in protecting and providing stewardship for the acquired lands. Thank you for your consideration of this legislation. Should you have questions, please contact Cyndy Holtz at 386-1990.

Sincerely,

A handwritten signature in dark ink, appearing to read "Greg Nickels", written over a horizontal line.

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, Seattle, WA 98104-8154

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, E:mail: mayors.office@ci.seattle.wa.us

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STATE OF WASHINGTON – KING COUNTY

--SS.

190480

No. TITLE ONLY

CITY OF SEATTLE, CLERKS OFFICE

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

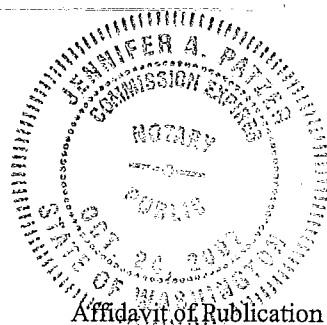
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:121916,920-121930

was published on

10/03/05

The amount of the fee charged for the foregoing publication is the sum of \$ 145.75, which amount has been paid in full.



Affidavit of Publication

Subscribed and sworn to before me on

10/03/05

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on September 19, 2005, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 121930

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

ORDINANCE NO. 121929

AN ORDINANCE relating to security from terrorism; reducing appropriations in the 2005 Budgets of the Police Department, City Light, the Department of Planning and Development, Seattle Public Utilities, the Department of Information Technology, and the Seattle Department of Transportation; and reappropriating that money to the Fleets & Facilities Department, Seattle Center, and the Fire Department.

ORDINANCE NO. 121928

AN ORDINANCE relating to the acquisition and management of real property and property interests on the Cedar River below Landsburg Dam, in King County; authorizing Seattle Public Utilities to acquire specified properties or conservation easements and to accept applicable deeds; authorizing Seattle Public Utilities to enter into an agreement with Cascade Land Conservancy for land acquisition and management services; and authorizing Seattle Public Utilities to convey easements or stewardship assignments in connection with the Conservancy's management responsibilities.

ORDINANCE NO. 121927

AN ORDINANCE removing a budget proviso that restricted an appropriation in the Department of Information Technology's 2005 budget.

ORDINANCE NO. 121926

AN ORDINANCE authorizing City Light to accept funds from the Washington State Attorney General's Office to collaborate on a refund program to provide restitution back to the business consumers who paid high electricity prices during the energy crisis; authorizing the necessary agreements; and authorizing City Light to take the actions necessary to allocate the settlement funds proportionately to Commercial and Industrial customers by providing a credit on the bill of the receiving businesses.

ORDINANCE NO. 121924

AN ORDINANCE revising a budget proviso that had restricted spending on the Arterial Asphalt and Concrete Program; authorizing the Director of Transportation to enter into interlocal funding agreements with the Cities of Beaux Arts, Clyde Hill, Hunts Point, Medina, and Yarrow Point; authorizing the Director of Transportation to enter into interlocal funding agreements with the Washington State Department of Transportation (WSDOT) and the deposit of funds to be received; contingently increasing an appropriation to the Seattle Department of Transportation; and amending the 2005-2010 Capital Improvement Program.

Page 2 of 11

ORDINANCE NO. 121922

AN ORDINANCE relating to the City Light Department, accepting various easements for overhead and underground electrical distribution rights in King County, Washington; and placing said easements under the jurisdiction of the City Light Department.

ORDINANCE NO. 121921

AN ORDINANCE related to Seattle City Light's Security Improvements Project, removing a restriction that prohibits spending of Seattle City Light's Finance and Administration CIP Budget Control Level appropriation in the 2005 Adopted Budget on that project.

ORDINANCE NO. 121920

AN ORDINANCE relating to the City Light Department; authorizing the acceptance of deeds to two properties in Skagit County, Washington, and authorizing the grant of a Conservation Easement on one of said properties to Skagit Land Trust, all for salmonid habitat protection purposes.

ORDINANCE NO. 121916

AN ORDINANCE relating to Seattle Public Utilities' security from terrorism; authorizing that department to accept grants from the State of Washington and King County for security improvements to certain City water system facilities and for creation of a regional contaminant response team; amending the 2005-2010 Adopted Capital Improvement Program with respect to such projects, and increasing that department's 2005 Adopted Budget by making appropriations reimbursable with grant funds.

Publication ordered by JUDITH PIPPIN,
City Clerk
Date of publication in the Seattle Daily
Journal of Commerce, October 3, 2005.
10/3(190480)