



**Snohomish County
Parks and Recreation**



COPY

John Lovick
County Executive

March 20, 2014

(425) 388-6600
FAX (425) 388-6645

6705 Puget Park Drive
Snohomish, WA 98296

Mr. Larry Bauman, City Manager
City of Snohomish
116 Union Avenue
Snohomish, WA 98290

RE: Interlocal Cooperation Agreement – Stocker Property Acquisition

Dear Mr. Bauman:

Enclosed please find the executed Interlocal Cooperation Agreement (“Agreement”) between the City of Snohomish (“City”) and Snohomish County obligating certain acquisition funds to the City. The effective date of this Agreement is March 12, 2014 and acquisition of the property must occur no later than eighteen (18) months from the effective date.

This Agreement will provide up to \$500,000.00 from the Snohomish County Conservation Futures Property Tax fund for City purchase of property known as the Stocker property. The fund will reimburse for property acquisition and related costs after submittal of the following documents:

- A copy of the signed Settlement Statement, issued by Escrow Company
- A copy of the Excise Tax Affidavit
- A copy of the recorded Statutory Warranty Deed
- A copy of the Title Insurance, listing the City of Snohomish as the vested owner
- A copy of the recorded Grant of Conservation Easement (the County must “accept” the easement after the City signs)
- Copies of invoices paid by the City for acquisition related cost (see copy of reimbursable eligible costs)

I have also included the original Grant of Conservation Easement. This document must be recorded after the City has acquired the property subject to the Agreement. I can record the easement after the County “accepts” it. Please check the legal description to the Grant of Conservation Easement for accuracy and confirm it matches the Statutory Warranty Deed. If you have any questions, I can be reached at 425-388-6622.

Sincerely,

Dianne Bailey
Parks Property Administrator

Enclosure (3)

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN
SNOHOMISH COUNTY AND THE CITY OF SNOHOMISH
CONCERNING
ACQUISITION OF PROPERTY WITH CONSERVATION FUTURES FUNDS**

THIS INTERLOCAL COOPERATION AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE CITY OF SNOHOMISH CONCERNING ACQUISITION OF PROPERTY WITH CONSERVATION FUTURES FUNDS (this "Agreement"), is made and entered into this 12th day of March, 2013, by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (the "County"), and the CITY OF SNOHOMISH, a Washington municipal corporation (the "City") pursuant to Chapter 39.34 RCW.

RECITALS

A. The County manages a Conservation Futures funding program pursuant to RCW 84.34.200 et seq. and Chapter 4.14 Snohomish County Code. This Agreement is entered into under the provisions of RCW 84.34.200, SCC Chapter 4.14 and pursuant to the authority of Chapter 39.34 RCW, the Interlocal Cooperation Act.

B. Cities and towns located in Snohomish County, nonprofit historic preservation corporations, and nonprofit nature conservancy corporations or associations as such are described in RCW 84.34.210 are eligible to apply to the County for resources to fund acquisition of interests or rights in real property located within Snohomish County that meet the conservation criteria described in RCW 84.34.210 et seq.

C. The City applied for resources from the Snohomish County Conservation Futures Property Tax Fund to purchase unimproved real property located in the City and unincorporated Snohomish County and more particularly described in Section 1 and Exhibit A below (hereinafter referred to as the "Property").

D. The Snohomish County Conservation Futures Program Advisory Board, at their August 20, 21 and 23, 2013 meetings, reviewed all of the project sponsor requests and, after review, recommended funding the request of the City of Snohomish for Five Hundred Thousand and 00/100 Dollars (\$500,000.00) from the Snohomish County Conservation Futures Property Tax Fund.

E. On September 11, 2013, the Snohomish County Council, by Amended Motion No. 13-353, approved the purchase of the Property by the City of Snohomish and awarded Five Hundred Thousand and 00/100 Dollars (\$500,000.00) from the Snohomish County Conservation Futures Property Tax Fund for that purpose.

NOW, THEREFORE, in consideration of the mutual promises set out below and for other good and valuable consideration, the Parties agree as follows:

1. Identification of Property. The unimproved Property is located in the City of Snohomish, Washington, and unincorporated Snohomish County and is generally legally described as follows:

SEE ATTACHED EXHIBIT A.

2. Purpose of Property Acquisition. The Property is to be acquired for the purpose of conserving open spaces and areas as authorized by RCW 84.34.200 et seq., and for conservation and for passive, public recreation.

3. Duration. This Agreement shall become effective when executed by both parties and posted on the County's Interlocal Agreements website (the "Effective Date"). If the Property is acquired within the time frame provided in Section 5.1 below, this Agreement shall be in effect perpetually, subject to any amendments agreed to in writing by the parties. If the Property is not acquired within the time frame provided in Section 5.1 below, this Agreement shall be terminated; PROVIDED, HOWEVER, that the County and the City may mutually agree in writing, prior to termination, upon an extension of time.

4. Administrators. Each party to this Agreement shall designate an individual (an "Administrator") who may be designated by title or position, to oversee and administer such party's participation in this Agreement. The parties' initial Administrators shall be the following:

County's Initial Administrator:
Tom Teigen, Director
Snohomish County Parks and
Recreation
6705 Puget Park Drive
Snohomish, WA 98296

City's Initial Administrator:
Larry Bauman, City Manager
City of Snohomish
116 Union Avenue
Snohomish, WA 98290

Either party may change its Administrator at any time by delivering written notice of such party's new Administrator to the other party.

5. Duties of the City to Acquire, Operate, Maintain and Conserve. The City shall:

5.1 Acquire the Property within eighteen (18) months of the Effective Date of this Agreement and upon closing maintain, operate and conserve the Property for open space and passive park purposes. The City shall undertake all reasonable efforts to acquire the Property but if the owner of is not a willing

seller, the City shall not utilize the power of eminent domain to acquire the Property.

5.2 Immediately following acquisition of the Property, execute and record an instrument conveying a Conservation Easement for the Property to the County in substantially the form attached hereto as Exhibit B (the "Conservation Easement").

5.3 Submit an annual report to the County on February 1 of each subsequent year detailing compliance with all on-going requirements of this Agreement.

5.4 Forward a copy of the recorded deed conveying the Property and a copy of the executed Conservation Easement for the Property to the County as soon as the same are returned from the Snohomish County Auditor.

5.5 Provide an identifying sign, the size and design of which shall be approved by the Snohomish County Department of Parks and Recreation, at the entrance to the Property which shall be in plain sight in perpetuity, listing the County as a participant in the acquisition of the Property through the Snohomish County Conservation Futures Program.

5.6 Fund any improvements that are made to the Property from revenue sources other than Conservation Futures Program Funds and limit any such improvements to those that meet the requirements and intent of RCW 84.34.200 et. seq. and the Conservation Easement.

5.7 Submit to the County a long-term maintenance plan for the Property and any improvements within three (3) months of the completed Property acquisition.

5.8 Pay to the County at the end of each calendar year a pro rata share of any income the City has realized from the Property, less the City's costs of operation and maintenance of the Property. The pro rata share will be equal to the percentage of the cost of acquisition funded by the County pursuant to this Agreement. This information shall be submitted as part of the February 1 annual report to the Snohomish County Department of Parks and Recreation.

5.9 Pay to the County, upon sale of any of the City's interest in the Property, or any portion thereof, a pro rata share of any consideration received, less the costs of improvements funded by the City. The pro rata share will be equal to the percentage of the cost of acquisition funded by the County pursuant to this Agreement.

5.10 Pay on a current basis all taxes or assessments levied on Property-related activities and the Property; PROVIDED, HOWEVER, that nothing contained herein will modify the City's right to contest any such tax, and the City will not be deemed to be in default as long as it is, in good faith, contesting the validity or amount of any such taxes.

5.11 Obtain and maintain, at its own costs and expense, all necessary permits, licenses and approvals related to the purchase, ownership, and on-going maintenance and management of the Property.

6. Payment from the County. The County shall provide financial assistance to the City in the amount of up to \$500,000.00 from the Conservation Futures Fund for the acquisition of the Property. Payment shall be made within ten (10) days of County receipt of a City invoice submitted with documentation of imminent purchase of the Property and transfer of title, provided the City has complied with all of the terms of this Agreement. In no event shall the County be obligated to provide any payment to the City in excess of the actual purchase price of the Property. Any obligations of the County beyond the current fiscal year are subject to appropriation of funds for the specific purpose of funding this Agreement in accordance with its Charter and applicable law.

7. Compliance with Laws. The parties shall comply with all applicable federal, state and local laws, rules and regulations in performing this Agreement, including, but not limited to, laws against discrimination.

8. Records, Inspections and Audits.

The City will keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. The County may, at its sole discretion, from time to time whether before or after acquisition of the Property or termination of this Agreement inspect all books and records and other materials related to any matters covered by this Agreement and not otherwise privileged, belonging to the City or any contractor or to elect to have an audit conducted to verify acquisition-related costs through the date of the acquisition, income from the Property, maintenance and operation costs, and the cost of post-acquisition improvements. Such books, records and other materials shall be made available for County inspection during regular business hours within a reasonable time of the request. If the County elects to conduct such an audit, it will give notice to the City, and such audit will be conducted as soon as is reasonably feasible thereafter, but County payments to the City (if any) will not be delayed pending the outcome of the audit. Such audit will be conducted by an auditor selected by the County, and the County will, except as provided herein, pay the cost of such audit. The City agrees to cooperate with the auditor and to make available for examination at its principal office all of its books, records, correspondence and other documents deemed necessary to conduct the audit by the auditor. If the audit reveals a variation equal to five percent (5%) or more of the cost of acquiring the Property, then the

City will pay the cost of the audit, not to exceed Ten Thousand and 00/100 Dollars (\$10,000.00).

The City will preserve all records for a period of seven (7) years; PROVIDED, HOWEVER, that if the City proposes to dispose of any documents materially related to the Property for a period less than seven (7) years, then the City will deliver the same to the County for disposition by the County.

The County may at all times enter the Property to determine the City's compliance with the terms and conditions of this Agreement or to post notices. Any person or persons who may have an interest in the purposes of the County's visit may accompany the County.

The City acknowledges and agrees that its obligations under this Section 8 will survive termination of this Agreement.

9. Risk of Loss. All of the City's personal property of any kind or description whatsoever, or that of its employees, agents, contractors, and/or invitees placed on the Property shall be at the City's sole risk, and the County will not be liable for any damage done to, or loss of, such personal property.

10. Public Records Act. This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the City are needed for the County to respond to a request under the Act, as determined by the County, the City agrees to make them promptly available to the County. If the City considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the City shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the City and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the City (a) of the request and (b) of the date that such information will be released to the requester unless the City obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the City fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the City to claim any exemption from disclosure under the Act. The County shall not be liable to the City for releasing records not clearly identified by the City as confidential or proprietary. The County shall not be liable to the City for any records that the County releases in compliance with this Section or in compliance with an order of a court of competent jurisdiction.

11. Hold Harmless and Indemnification. The City shall assume the risk of, be liable for, and pay all damage, loss, costs and expense of any party arising out of the activities under this Agreement and all use of any improvements it may place on the Property. The City shall hold harmless, indemnify and defend the County, its officers, elected and appointed officials, employees and agents from and against all claims, losses, lawsuits, actions, counsel fees, litigation costs, expenses, damages, judgments, or decrees by reason of damage to any property or business and/or any death, injury or disability to or of any person or party, including but not limited to any employee, arising out of or suffered, directly or indirectly, by reason of or in connection with the acquisition or use of the Properties and this Agreement; PROVIDED, that the above indemnification does not apply to those damages caused by the sole negligence or willful misconduct of the County, its elected and appointed officials, officers, employees or agents.

In executing this Agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, policies, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, policy, rule or regulation is at issue, the City shall defend the same at its sole expense and, if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and reasonable attorney's fees.

12. Dispute Resolution. The Parties agree to use their best efforts to resolve disputes and other matters arising out of this Agreement or the ongoing administration of this Agreement. If a dispute arises, then (i) within ten (10) business days of a written request by either Party, the City's designated representative and County's designated representative shall meet and resolve the issue; if these parties cannot resolve the issue within ten (10) business days of the meeting, then (ii) the issue shall be submitted to the City Manager and to the Director of the Snohomish County Department of Parks and Recreation; if these parties cannot resolve the issue within fifteen (15) business days of submission to them, then (iii) the issue shall be submitted for mediation; if mediation does not successfully resolve the dispute, then (iv) either Party may file suit in a court of competent jurisdiction. The prevailing party in any legal action shall be entitled to a reasonable attorneys' fee and court costs.

13. Notice. All notices required to be given by any party to the other party under this Agreement shall be in writing and shall be delivered either in person, by United States mail, or by electronic mail (email) to the applicable Administrator or Administrator's designee. Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, and addressed

to the Administrator or Administrator's designee at the addresses set forth in Section 1.4 above. Notice delivered by email shall be deemed given as of the date and time received by the recipient.

14. Miscellaneous.

14.1. Entire Agreement; Amendments. This Agreement shall constitute the full and complete Agreement of the parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the parties regarding the subject matter contained herein. This Agreement may be amended only by written agreement of the parties, executed in the same manner as provided by the Interlocal Cooperation Act, Chapter 39.34 RCW, governing the execution of this Agreement.

14.2. Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

14.3. Governing Law and Stipulation of Venue. This Agreement shall be governed by the laws of the State of Washington and the parties stipulate that any lawsuit regarding this Agreement must be brought in Snohomish County, Washington. In the event that a lawsuit is instituted to enforce any provision of this Agreement, the prevailing party shall be entitled to recover all costs of such a lawsuit, including reasonable attorney's fees.

14.4. Rights and Remedies. The rights and remedies of the Parties to this Agreement are in addition to any other rights and remedies provided by law except as otherwise provided in this Agreement.

14.5. No Third Party Rights. It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under, or by reason of, this Agreement on any persons other than the Parties.

14.6. Binding on Successors. All of the terms, provisions and conditions of this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors, permitted assigns and legal representatives.

14.7. No Waiver. Payment by the County under this Agreement shall not constitute a waiver by the County of any claims it may have against the City for any breach of this Agreement or for failure of City to perform the work or actions, as specified in this Agreement. Forbearance of the rights of the parties under this Agreement will not constitute waiver of entitlement to exercise their respective rights as to any future acts or omissions by the offending party.

14.8. No Employee Relationship. In performing work and services pursuant to this Agreement, the City, its employees, consultants, agents, and representatives shall be acting as agents of the City and shall not be deemed or construed to be employees or agents of the County in any manner whatsoever. The City shall not hold itself out as, nor claim to be, an officer or employee of the County and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of County. The City shall be solely responsible for any claims for wages or compensation by the City's employees, consultants, agents, and representatives, including sub-consultants, or any agency, and shall defend, indemnify and hold County harmless therefrom.

14.9 Conflicts between Attachments and Text. Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Agreement, the text or main body of this Agreement shall prevail.

14.10 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

14.11 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

14.12 No Assignment. This Agreement shall not be assigned, either in whole or in part, by either party without the express written consent of the other party, which may be granted or withheld in such party's sole discretion. Any attempt to assign this Agreement in violation of the preceding sentence shall be null and void and shall constitute a Default under this Agreement.

14.13 Warranty of Authority. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign this Agreement.

14.14 No Joint Venture. Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture or other joint enterprise between the parties.

EXHIBIT A

Legal Description

Legal Description - Stocker Farm Acquisition

City of Snohomish

18 October, 1999

PARCEL A

All that part of Government Lots 11 and 12 of Section 19, Township 28 North, Range 6 East, W.M., lying Northerly of Great Northern Railroad right of way and lying West of Snohomish-Monroe County Road;

TOGETHER WITH those portions of Government Lot 5, and the Southwest quarter of the Southeast quarter of Section 18, Township 28 North, Range 6 East, W.M., described as follows:

Beginning at the Southwest corner of Block 6, Snohomish City Eastern Part, as recorded in Volume 1 of Plats at page 7, Records of Snohomish County, Washington;
thence S50°04'56"E, along the South side of said Block 6, and the Easterly extension thereof, for a distance of 300.00 feet to the Easterly side of Willow Street;
thence N39°54'00"E, along Easterly side of Willow Street, for a distance of 128.04 feet to the Southwest corner of Lot 8, Block 5, of said plat;
thence S50°04'51"E, along the South line of Lots 8, 7, 6, and 5, for a distance of 240.00 feet to the East line of said Block 5;
thence N39°54'00"E, along the East line of said Block 5, for a distance of 8.00 feet;
thence S50°04'47"E, parallel with the centerline of First Street, for a distance of 48.65 feet;
thence S16°30'41"W for a distance of 272.22 feet;
thence S42°56'27"E for a distance of 376.73 feet;
thence N89°26'15"E, for a distance of 158.57 feet, to intersect the West right of way line of the Old Snohomish Monroe Road, said road having a half width of 30.00 feet;
thence S08°52'47"E, along said West right of way line, for a distance of 321.25 feet to a point of curvature;
thence along a tangent curve to the right having a radius 686.80 feet, through a central angle of 6°23'43", for an arc distance of 76.66 feet to intersect the South line of said Southwest quarter of the Southeast quarter;
thence N89°06'21"W, along the South line of said subdivision, for a distance of 86.96 feet to the South one-quarter corner of said Section 18;
thence N89°05'57"W, along the South line of said Government Lot 5, to the East bank of the Snohomish River;
thence Northwesterly, along said East bank, to intersect the Easterly right of way line of State Street;
thence N39°54'01"E, along said Easterly right of way line, to the POINT OF BEGINNING;

EXCEPT streets;

TOGETHER WITH the South 34 feet of vacated Commercial Street per ordinance No. 354 adjacent to the above tract.

Situate in the County of Snohomish, State of Washington.

PARCEL B

That portion of the Monroe Logging Company right of way located in Section 18, Township 28 North, Range 6 East, W.M., the centerline of which is described as follows:

Commencing at the quarter corner between Sections 18 and 19, Township 28 North, Range 6 East, W.M., and running thence N77°24'W 389.4 feet to a point marked by a hub inscribed and known as Station 14+71.8 point of intersection;
thence N37°14'W for a distance of 1139.5 feet to a point marked by a hub inscribed and known as point of intersection 4+66.2;
thence N36°38'E 466.2 feet to a point in the centerline of the track of the Northern Pacific Railway marked by a hub inscribed and known as Station 0+00 of the Monroe Logging Company Railway location;
thence Southerly, on a 9°15' curve to the left for a distance of 320 feet, more or less, to a point of intersection with the Southerly boundary of the right of way of the Chicago, Milwaukee and St. Paul Railway, which point of intersection is the TRUE POINT OF BEGINNING of this right of way centerline description of the main line Railway of the Logging Company over said land;
thence continuing from said true point of beginning on a 9°15' curve to the left, a distance of 478.5 feet;
thence S37°14'E 476.3 feet;
thence on a 6° curve to the right 388.3 feet;
thence S13°56'E 281.6 feet;
thence on a 6° curve to the left 429.1 feet;
thence S48°16'E a distance of 120 feet, more or less, to the Northerly boundary of the Great Northern Railway right of way;
thence continuing to the centerline of the Great Northern Railway, the end of this centerline description;

EXCEPT any portion thereof lying within Great Northern Railway;

EXCEPT any portion thereof lying within Government Lots 11 and 12, Section 19, Township 28 North, Range 6 East, W.M.;

AND EXCEPT any portion thereof lying within Government Lot 5, Section 18, Township 28 North, Range 6 East, W.M.;

Situate in the County of Snohomish, State of Washington.

Contains approximately 19.13 acres, excluding city streets.

Subject to easements and reservations of record.

EXHIBIT B

Conservation Easement

After Recording Return to:
Assistant Clerk
Snohomish County Council
3000 Rockefeller Avenue MS 609
Everett, WA 98201

Document Title: Grant of Conservation Easement

Reference Numbers:

Grantor: City of Snohomish, a municipal corporation of the State of Washington

Grantee: Snohomish County, a political subdivision of the State of Washington

Abbreviated Legal Description: Ptns 19-28-6 & 28-28-6, Snohomish County, WA

Additional legal on page 16

Assessor's Property Tax Parcel No.: 28061800302300 Add'l on p. 1

GRANT OF CONSERVATION EASEMENT

This grant of a perpetual CONSERVATION EASEMENT (hereinafter "Conservation Easement") is made this ____ day of _____, 2013, by the City of Snohomish, a municipal corporation of the State of Washington (hereinafter "Grantor"), to Snohomish County, a political subdivision of the State of Washington (hereinafter "Grantee" or "County"), in perpetuity as holder of the Conservation Easement pursuant to RCW 64.04.130.

RECITALS

A. Grantor is the sole owner in fee simple of the property legally described on Exhibit A, which is attached hereto and incorporated herein by reference (the "Protected Property"), which consists of approximately 20 acres of land, located on tax parcels 28061800302300; 28061800302600; 28061800302800; portion of 28061800302200; portion of 28061800302400; 28061900200200; 28061900200300 and 28061800302500 Snohomish County, Washington; and

B. Grantor warrants that Grantor has good legal title to the Protected Property, as well as the right to convey this Conservation Easement, and that the Protected Property is free and clear of any encumbrances except those general exceptions contained in the title policy, any special exceptions shown on First American Title Company Preliminary Commitment No. 4229-2136830, Fifth Report, and conditions in the Purchase and Sale Agreement between the Stockers and the City of Snohomish; and

C. Grantor warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or waste on the Protected Property; and

D. The Protected Property possesses significant long-term natural and open space values ("Conservation Values") of great importance to the people of Snohomish County for passive recreation; and

E. This Conservation Easement is authorized by RCW 64.04.130, the provision of state law governing conservation easements; and

F. The Grantor and the Grantee intend and have the common purpose of retaining the Protected Property for open space and passive recreation by placing restrictions on the use of the Protected Property, which shall continue as a servitude running with the land, and authorizing Grantee to monitor and enforce such restrictions, as described herein; and

G. To document the present condition of the Protected Property so that Grantee or its assigns are able to monitor future uses and assure compliance with the terms of this Conservation Easement, Grantee has, at its expense, prepared baseline data consisting of photographs and other documentation summarized in Exhibit B and incorporated herein by reference as though set forth in full (the "Baseline Documentation") that the parties agree provide an accurate representation of the Protected Property as of the date of this Conservation Easement; and

H. Snohomish County, as the Grantee of this Conservation Easement, is a qualified holder of conservation easements under RCW 64.04.130; and

I. This Conservation Easement is being purchased with funds provided, in part, by the County's Conservation Futures Program pursuant to RCW 84.34.200, RCW 84.34.210, RCW 84.34.220 and chapter 4.14 SCC, which authorizes Snohomish County to purchase conservation easements for the purpose of protecting open space and timber land through restrictions on incompatible uses of the land;

NOW, THEREFORE, for and in consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein and in payment of one dollar (\$1.00) and other valuable consideration by Grantee, the receipt of which is hereby acknowledged by Grantor, and pursuant to the laws of the State of Washington, including chapters 64.04 and 84.34 of the Revised Code of Washington, the parties agree as follows:

I. Grant. Grantor hereby grants to the Grantee a perpetual Conservation Easement over, under, across and through the Protected Property, as described

in Exhibit A attached hereto, to protect, preserve, maintain, improve, restore, limit future use of or otherwise conserve the Protected Property as open space pursuant to chapter 84.34 RCW.

II. Purpose. The purpose of this Conservation Easement is to assure that the Protected Property will be retained forever in its natural and open space condition and to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values. Grantor intends that this Conservation Easement will confine the use of, or activity on, the Protected Property to such uses and activities that are consistent with this purpose. This statement of purpose is intended as a substantive provision of the Conservation Easement. Any ambiguity or uncertainty regarding the application of the provisions of this Conservation Easement will be resolved so as to further this purpose.

III. Rights of the Grantee. Grantor hereby conveys to the Grantee all rights necessary to accomplish the purpose of this Conservation Easement, including, without limitation, the following:

- A. The right to protect, conserve, maintain, improve and restore the Conservation Values of the Protected Property;
- B. The right to enter the Protected Property or allow Grantee's invitees or licensees to enter, at a reasonable time and upon prior written notice to the Grantor, for the following purposes (i) to make general inspection of the Protected Property to monitor compliance with this Conservation Easement; (ii) to protect, preserve, maintain, improve and restore the Conservation Values of the Protected Property; and (iii) to mitigate or terminate any violation or otherwise enforce the provisions of this Conservation Easement.
- C. The right to enjoin any use of, or activity on, the Protected Property that is inconsistent with the purpose of this Conservation Easement, including trespasses by members of the public, and to require the restoration of such area or features of the Protected Property as may be damaged by uses or activities inconsistent with the provisions of this Conservation Easement, all in accordance with Section XI.
- D. The right to enforce the terms of this Conservation Easement, consistent with Section XI.
- E. The right to place a sign on the Protected Property which acknowledges this Conservation Easement, any conditions on

access, and any funding contribution to the acquisition of the Conservation Easement.

The foregoing are rights, not obligations, and shall not create any third party rights of enforcement.

IV. Permitted Uses and Activities.

- A. Grantor reserves to itself, and to its successors and assigns all rights accruing from its ownership of the Protected Property, including the right to engage in or permit or invite others to engage in all uses of the Protected Property that are not prohibited herein and are not inconsistent with the purpose of this Conservation Easement. In the event Grantor plans to undertake actions that could be inconsistent with the purpose of this Conservation Easement, Grantor shall provide Grantee written notice of such intent not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Conservation Easement. Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's notice. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action proposed would be inconsistent with the purpose of this Conservation Easement.

- B. Any improvements to the Protected Property shall be limited to those which are passive in nature and meet the requirements and intent of RCW 84.34.200-220. Passive improvements include, but are not limited to, trails, interpretive centers, viewpoints, picnicking facilities, access, restrooms, playgrounds, restoration projects, boat launch, parking, associated roads, trails for moving livestock, off-leash dog park, community gardens, fencing, storm drainage, underground utilities, shoreline protection and other activities as provided for in existing easements of record and executed City of Snohomish/Stocker Purchase and Sale Agreement. Active recreational improvements are prohibited. Such improvements include, but are not limited to ball fields, use by motorized vehicles, swimming pools, and recreation centers.

- C. Nothing herein precludes the Grantor from demolishing, removing, and remediating existing improvements on the property as of the date of this Conservation Easement.

V. Prohibited Uses and Activities. Neither Grantor nor its licensees or invitees shall use the Protected Property for any activity or purpose that is inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following activities are expressly prohibited in the Protected Property:

- A. The placement or construction of any buildings, structures, improvements or equipment of any kind except as permitted in subsection IV. B;
- B. The continuation, creation, expansion or intensification of any use or activity that is contrary to the purpose of this Conservation Easement or prohibited in this section;
- C. Mining or extraction of soil, sand, gravel, oil, natural gas or other mineral;
- D. Dumping or accumulation of trash or refuse;
- E. The use of motorized vehicles except for those necessary to conduct the uses permitted under this Conservation Easement; and
- F. Any construction, expansion, repair or other development activity that would result in more than ten percent (10%) of the area of the Protected Property being covered with impervious surfaces, including, without limitation, asphalt, concrete, gravel, buildings, or ponds.

VI. Transfer of Property. The Grantor agrees to:

- A. *Incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, leasehold interests.*
- B. Describe the Conservation Easement in and append it to any contract for the transfer of any interest in the Protected Property.
- C. Give written notice to the Grantee of the transfer of any interest in all or any portion of the Protected Property no later than forty five (45) days prior to the date of such transfer. Such notice to the Grantee shall include the name, address and telephone number of the prospective transferee or the prospective transferee's representative.

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

VII. Extinguishment. This Conservation Easement may be terminated or extinguished, whether in whole or in part, only under one or more of the following circumstances:

- A. By judicial determination, by a court having jurisdiction over the Conservation Easement, those circumstances have rendered the purpose of this Conservation Easement impossible to achieve.
- B. In the event all or any of the Protected Property is taken by exercise of the power of eminent domain or acquired in lieu of condemnation, whether by public, corporate or other authority, except by the parties hereto.

VIII. Proceeds. In the event of termination or extinguishment of this Conservation Easement, Grantee shall be compensated by Grantor for the fair market value of its interest in the Protected Property as determined by either a real estate appraiser licensed by the State of Washington or a court of competent jurisdiction.

IX. Transfer or Assignment of the Conservation Easement. *This Conservation Easement is transferable, but Grantee may assign its rights under this Conservation Easement only to an agency or organization that is authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.250, or otherwise qualified at the time of transfer under §170(h) of the Internal Revenue Code of 1986. As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the purpose of this Conservation Easement.*

X. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to ownership, operation, upkeep, and maintenance of the Protected Property.

- A. Taxes. Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property.
- B. Attorneys' fees and costs for enforcement. If the Grantee commences and successfully prosecutes an enforcement action pursuant to Section XI below, the Grantor shall pay all reasonable costs and expenses associated with the enforcement action, including but not limited to, reasonable attorneys' fees.

XI. Enforcement & Monitoring. Grantee shall have the authority to enforce the terms of this Conservation Easement. To exercise this authority and thereby further the purpose of this Conservation Easement, the Grantee shall have the following rights under this Conservation Easement, which are subject to the stated limitations:

- A. Entry onto Protected Property with Reasonable Notice. If the Grantee has reason to believe that a violation of the terms of this Conservation Easement has occurred or is occurring, the Grantee shall have the right to enter the Protected Property, provided that reasonable advance notice is given to the Grantor, for the purpose of inspecting it for violations of any requirement set forth in this Conservation Easement. Additionally, the Grantee shall have the right to enter the Protected Property at least once a year, at a mutually agreed time, for purposes of inspection and compliance monitoring regardless of whether Grantee has reason to believe that a violation of this Conservation Easement exists.
- B. Enforcement Mechanisms and Remedial Measures. If the Grantee finds what it believes to be a violation of this Conservation Easement, it may, at its discretion, use any available legal or equitable remedy to secure compliance, including but not limited to seeking injunctive relief and/or specific performance requiring the Grantor to cease and desist all activity in violation of the terms of this Conservation Easement and to return the Protected Property to its condition prior to any violation(s). Except when an imminent violation could irreversibly diminish or impair the Conservation Values of the Protected Property, the Grantee shall give the Grantor written notice of the violation and thirty (30) days in which to take corrective action prior to commencing any legal action. The failure of Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time or constitute a waiver of its rights. Grantee may use the Baseline Documentation as a basis for enforcing the provisions of this Conservation Easement, but is not limited to the use of the Baseline Documentation to show a change of conditions.
- C. Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damages to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.

- D. Scope of Relief. Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. Grantor agrees that the Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation 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.
- E. Costs of Enforcement. In the event Grantee must enforce the terms of this Conservation Easement, any costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, invitees or licensees in violation of the terms of this Conservation Easement and Grantee's reasonable enforcement expenses, including reasonable attorneys' and consultants' fees and costs, shall be borne by Grantor, its successors or assigns.
- F. Waiver of Defenses. Grantor acknowledges it has carefully reviewed this Conservation Easement and has consulted or had the opportunity to consult with counsel of its terms and requirements. In full knowledge of the provisions of this Conservation Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors or assigns under or pertaining to this Conservation Easement based upon waiver, laches, estoppel or prescription.
- G. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle the Grantee to bring any action against Grantor to abate, correct or restore any condition in the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including fire, flood, storm, and earth movement or the like.

XII. Hold Harmless. Grantor hereby agrees to release and hold harmless, indemnify and defend Grantee, its officers, elected and appointed officials, employees and agents (collectively "Indemnified Parties") from all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including, without limitation, reasonable attorneys' and consultants' fees arising from or in any way connected with:

XV. General Provisions.

- A. Amendment. If circumstances arise under which an amendment to this Conservation Easement would be appropriate, the Grantor and Grantee may jointly amend this Conservation Easement by a written instrument to be recorded with the Snohomish County Auditor, provided that such an amendment does not diminish the effectiveness of this Conservation Easement in carrying out its purpose to permanently preserve and protect in perpetuity the Conservation Values of the Protected Property.
- B. Controlling Law. The interpretation or performance of this Conservation Easement shall be governed by the laws of the State of Washington and the Laws of the United States. Any legal proceeding regarding this Conservation Easement shall be initiated in Snohomish County Superior Court.
- C. Interpretation. This Conservation Easement shall be interpreted to resolve any ambiguities and questions of the validity of specific provisions to give maximum effect to its preservation purpose, as stated in Section II, above. If the Grantor has any doubt concerning the Conservation Easement, covenants, conditions, limitations or restrictions herein contained with respect to any particular use of the said Protected Property, it may submit a written request to the Grantee for consideration and approval of such use.
- D. Definitions. Any masculine term used in this Conservation Easement shall include the female gender. The terms "Grantor" and "Grantee," wherever used in this Conservation Easement, and any pronouns used in their place, shall be held to mean and include respectively the above named Grantor, its successors, and assigns, and the above-named Grantee, its successors and assigns.
- E. Entire agreement. This Conservation Easement sets forth the entire agreement of the parties with respect to the issues addressed herein and supersedes all prior discussions, negotiations, understandings, or agreements relating to these issues, all of which are merged herein.
- F. No forfeiture. Nothing in this Conservation Easement shall result in a forfeiture or revision of Grantor's title in any respect.

- G. Successors. As stated in the above recitals, all covenants, terms, conditions, and restrictions of this Conservation Easement shall run with the land and be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.
- H. Severability. If any portion of this Conservation Easement is declared unlawful or invalid, the remainder of the Conservation Easement shall remain in full force and effect.
- I. Authority of signatories. The individuals executing this Conservation Easement warrant and represent that they are duly authorized to execute and deliver this Conservation Easement.
- J. No merger. If Grantee at some future time acquires the underlying fee title in the Protected Property, the interest conveyed by this Deed will not merge with fee title but will continue to exist and be managed as a separate estate.

XVI. Environmental Compliance.

- A. Grantor represents and warrants that, to the best of Grantor's knowledge, Grantor and the Protected Property are in compliance with all federal, state and local laws, regulations and requirements applicable to the Protected Property and its use, including without limitation all federal, state and local environmental laws, regulations and requirements.
- B. Grantor further represents and warrants that to the best of Grantor's knowledge: (i) there has been no release, dumping, burying, abandonment or migration from offsite onto the Property of any substances, materials or wastes that are hazardous, toxic, dangerous or harmful or are designated as, or contain components that are subject to regulation as hazardous, toxic, dangerous or harmful by any federal, state or local law, regulation, statute or ordinance; (ii) there is no pending or threatened litigation affecting the Property or any portion of the Property that will materially impair the Conservation Values; and (iii) no civil or criminal proceedings have been instigated or are pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantor nor its predecessors in interest have received any notice of violation, penalties, claims, demand letters or other notifications relating to a breach of environmental laws.
- C. Remediation. If at any time there occurs or has occurred a release in, on or about the Property of any substances now or hereafter

Attest:

Josephine Corey
City Clerk

APPROVED AS TO FORM

[Signature] 1-15-14
City Attorney Date

ACCEPTED BY GRANTEE:

On 3-10, 2014 the Snohomish County Council adopted Motion 14-069 authorizing the County Executive to accept the Conservation Easement, pursuant to RCW 64.04.130.

GRANTEE:
SNOHOMISH COUNTY

By: _____
John Lovick
Snohomish County Executive

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

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 Snohomish County, the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Printed Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____.
My Commission Expires: _____.

APPROVED AS TO FORM:

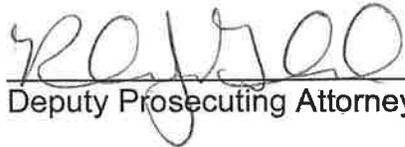

Deputy Prosecuting Attorney 12-20-13
Date

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO CONSERVATION EASEMENT

PARCEL A

All that part of Government Lots 11 and 12 of Section 19, Township 28 North, Range 6 East, W.M., lying Northerly of Great Northern Railroad right of way and lying West of Snohomish-Monroe County Road;

TOGETHER WITH those portions of Government Lot 5, and the Southwest quarter of the Southeast quarter of Section 18, Township 28 North, Range 6 East, W.M., described as follows:

Beginning at the Southwest corner of Block 6, Snohomish City Eastern Part, as recorded in Volume 1 of Plats at page 7, Records of Snohomish County, Washington;
thence S50°04'56"E, along the South side of said Block 6, and the Easterly extension thereof, for a distance of 300.00 feet to the Easterly side of Willow Street;
thence N39°54'00"E, along Easterly side of Willow Street, for a distance of 128.04 feet to the Southwest corner of Lot 8, Block 5, of said plat;
thence S50°04'51"E, along the South line of Lots 8, 7, 6, and 5, for a distance of 240.00 feet to the East line of said Block 5;
thence N39°54'00"E, along the East line of said Block 5, for a distance of 8.00 feet;
thence S50°04'47"E, parallel with the centerline of First Street, for a distance of 48.65 feet;
thence S16°30'41"W for a distance of 272.22 feet;
thence S42°56'27"E for a distance of 376.73 feet;
thence N89°26'15"E, for a distance of 158.57 feet, to intersect the West right of way line of the Old Snohomish Monroe Road, said road having a half width of 30.00 feet;
thence S08°52'47"E, along said West right of way line, for a distance of 321.25 feet to a point of curvature;
thence along a tangent curve to the right having a radius 686.80 feet, through a central angle of 6°23'43", for an arc distance of 76.66 feet to intersect the South line of said Southwest quarter of the Southeast quarter;
thence N89°06'21"W, along the South line of said subdivision, for a distance of 86.96 feet to the South one-quarter corner of said Section 18;
thence N89°05'57"W, along the South line of said Government Lot 5, to the East bank of the Snohomish River;
thence Northwesterly, along said East bank, to intersect the Easterly right of way line of State Street;
thence N39°54'01"E, along said Easterly right of way line, to the POINT OF BEGINNING;

EXCEPT streets;

TOGETHER WITH the South 34 feet of vacated Commercial Street per ordinance No. 354 adjacent to the above tract.

Situate in the County of Snohomish, State of Washington.

PARCEL B

That portion of the Monroe Logging Company right of way located in Section 18, Township 28 North, Range 6 East, W.M., the centerline of which is described as follows:

Commencing at the quarter corner between Sections 18 and 19, Township 28 North, Range 6 East, W.M., and running thence N77°24'W 389.4 feet to a point marked by a hub inscribed and known as Station 14+71.8 point of intersection;
thence N37°14'W for a distance of 1139.5 feet to a point marked by a hub inscribed and known as point of intersection 4+66.2;
thence N36°38'E 466.2 feet to a point in the centerline of the track of the Northern Pacific Railway marked by a hub inscribed and known as Station 0+00 of the Monroe Logging Company Railway location;
thence Southerly, on a 9°15' curve to the left for a distance of 320 feet, more or less, to a point of intersection with the Southerly boundary of the right of way of the Chicago, Milwaukee and St. Paul Railway, which point of intersection is the TRUE POINT OF BEGINNING of this right of way centerline description of the main line Railway of the Logging Company over said land;
thence continuing from said true point of beginning on a 9°15' curve to the left, a distance of 478.5 feet;
thence S37°14'E 476.3 feet;
thence on a 6° curve to the right 388.3 feet;
thence S13°56'E 281.6 feet;
thence on a 6° curve to the left 429.1 feet;
thence S48°16'E a distance of 120 feet, more or less, to the Northerly boundary of the Great Northern Railway right of way;
thence continuing to the centerline of the Great Northern Railway, the end of this centerline description;

EXCEPT any portion thereof lying within Great Northern Railway;

EXCEPT any portion thereof lying within Government Lots 11 and 12, Section 19, Township 28 North, Range 6 East, W.M.;

AND EXCEPT any portion thereof lying within Government Lot 5, Section 18, Township 28 North, Range 6 East, W.M.;

Situate in the County of Snohomish, State of Washington.

Contains approximately 19.13 acres, excluding city streets.

Subject to easements and reservations of record.

EXHIBIT B

(BASELINE DOCUMENTATION)

I. CURRENT CONDITIONS

II. PROPERTY DATA

A. Present Use.

Fenced pasture, underground utilities, fishing access, overflow event parking, trail for livestock movement between fields

B. Accessibility and Road Frontage.

Lincoln Avenue frontage, driveway access

C. Land Area.

Approximately 20 acres.

D. Land Shape.

Roughly rectangular; follows Snohomish River shoreline on west boundary

E. Land Contour and Elevations.

Pasture is level to gently rolling; Riverbank is steep-to-vertical drop to river. Approximate elevation varies from 5 to 25 feet NAVD88.

F. Minerals and Soil.

Alluvial deposits: Sultan Silt Loam, Puget Silty Clay, etc.

G. Flood Zone Information.

Floodway Zone AE and Floodway Fringe

H. Flora.

Mix of invasive and native riparian species on riverbank, pasture grass, wetland species and individual native trees.

I. Wetlands.

Present in northern portion of site.

III. PICTORIAL ASSESSMENT OF CURRENT SITE CONDITIONS

The following photographs of the Protected Property are not in recordable form and are available and on file with the Snohomish County Parks and Recreation Department:

-
-
-

Said photographs demonstrate current site conditions, features, typical flora, and impact of human development