

GRANT CONTRACT

This Grant Contract ("Grant") is made this 29th day of June, 2009, by and between Cascade Land Conservancy, a Washington non-profit corporation ("CLC"), and the City of Snohomish, a Washington municipal corporation ("City"). CLC or the City may be referred to herein as a "Party" and both as the "Parties."

RECITALS

WHEREAS, CLC and the Washington State Department of Community, Trade, and Economic Development (CTED) are seeking to complete a transfer of development rights (TDR) demonstration project in Snohomish County; and

WHEREAS, CLC has funds, provided by CTED Capital Contract #08-63303-100, as amended, to purchase development right credits from a sending site located in Snohomish County, and to facilitate the designation of one or more receiving sites within the City of Snohomish for those development right credits; and

WHEREAS, the City has adopted Resolution 1220 in which it agreed, following completion of the studies deemed necessary to designate a receiving site within the City, to certify development rights purchased by CLC for use in a future TDR program and to accommodate these rights in a future development project within the City; and

WHEREAS, CLC will subsequently resell its development right credits to an authorized receiving site land owner; and

WHEREAS, CTED has authorized CLC to provide the City with a grant for the purpose of funding the elements of an environmental site assessment and/or land use, transportation and infrastructure subarea plan that addresses the impacts or land use planning decisions directly related to determining an appropriate receiving site for a TDR demonstration project.

AGREEMENT

In consideration of the mutual promises and obligations hereinafter set forth, the Parties hereto agree as follows:

1. **Scope of Work.**
 - A. **Schedule.** The City agrees to perform the work and/or deliverables described in the Scope of Work, attached hereto as Exhibit "A" and incorporated herein.
 - B. **Meetings and Status Reports.** The Parties agree to meet (in person or via conference call) to discuss the status of the deliverables in accordance with the schedule in Exhibit "B", attached hereto and incorporated herein. The City agrees to provide CLC status reports in accordance with the schedule in Exhibit "A" and

after successful completion of all deliverables. CLC agrees to provide written acknowledgement of receipt of status reports.

- C. The City shall complete the scope of work in Exhibit "A" in compliance with all applicable law and consistent with accepted professional standards and practices. CLC shall have authority to approve and accept the City's work and work products. CLC shall not unreasonably withhold approval of the City's work and work products.
2. **Term of Contract.** This Grant becomes effective upon execution by CLC and the City and shall terminate upon successful completion of the deliverables in accordance with Exhibit "A" and Section 1 above.
 3. **Compensation and Payment**
 - A. The total grant to be paid by CLC for the full and complete performance of the Scope of Work hereunder shall be for the amount of \$149,995. Said grant shall be the total compensation for the City's performance hereunder.
 - B. The sum of \$149,995 shall be paid by CLC to the City upon mutual execution of this Grant. This payment shall be made by June 30, 2009.
 - C. In the event the City incurs cost in excess of the sum authorized under this Grant or amendments thereto, the City shall pay such excess from its own funds. CLC shall not be required to pay any part of such excess, and the City shall have no claim against CLC on account thereof.
 - D. The City may only use funds from the Grant for expenses directly related to activities identified in the Scope of Work.
 4. **Termination of Grant Contract**
 - A. If, through any cause, the City shall fail to fulfill in a timely and proper manner its obligations under this Grant or if the City shall violate any of its covenants, agreements or stipulations of this Grant, CLC shall have the right to terminate this Grant or if such default or violation is not corrected within twenty (20) days (Cure Period) after CLC submits written notice to the City describing such default or violation. If CLC terminates this Grant under this Section 4.A, CLC shall be reimbursed for any funds for any work not yet performed by the City through the Cure Period in connection with the tasks outlined in the Scope of Work.
 - B. Provided, that if more than twenty (20) days are required to correct any such default or violation and the City has initiated appropriate corrective measures as reasonably determined by CLC, CLC may, in its discretion, elect not to terminate this Grant for such default or violation. If CLC elects not to terminate under this Section, 4.A, CLC

shall provide written notice to the City extending the Cure Period as reasonably determined by CLC.

- C. Notwithstanding any provisions of this Grant, either party may terminate this Grant by providing the other party with written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.
 - D. In the event this Grant is terminated by the City, CLC shall be entitled to the reimbursement of any grant funds not used prior to such termination date and the balance of all unused Grant funds following the effective date of such termination. Any reimbursement to CLC shall be based upon the status of the deliverables pursuant to Section 1.C. If the Grant is terminated by CLC, the City shall be reimbursed for eligible expenses incurred prior to the effective date of such termination and not otherwise paid for by CLC, as in accordance with Section 1.C.
5. **Special Provision.** CLC's failure to insist upon the strict performance of any provision of this Grant or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Grant.
 6. **Indemnification.** It is understood and agreed that this Grant is solely for the benefit of the Parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Grant. Each party hereto agrees to be responsible and assume liability for its own negligent acts or omissions, or those of its officers, agents, or employees to the fullest extent required by law.
 7. **Reduction In Funds.** In the event CTED funds appropriated for the work contemplated under this Grant are withdrawn, reduced, or limited in any way by CTED during the Grant period, the Parties hereto shall be bound by any such revised funding limitations, and shall meet and renegotiate the Grant accordingly. In no event shall the amount of funds made subject to this Grant exceed the funds appropriated by CTED.
 8. **Dispute Resolution.** CLC and the City will promptly give the other Party notice of problems or concerns arising in connection with carrying out the scope of work under this Agreement 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. If the dispute is not resolved through such preventive discussions, CLC and the City may by mutual agreement submit the matters to mediation or arbitration upon such rules of mediation or arbitration as CLC and the City may agree.
 9. **Relationship Between The Parties.** The City and its employees or agents performing under this Grant are not deemed to be officers, employees, or agents of CLC in any manner whatsoever; nor will they hold themselves out as nor claim to be officers, employees, or agents of CLC hereof; nor will they make any claim, demand, or application to or for any right or privilege applicable to an officer, employee, or agent of CLC.

10. **Notices.** All notices, approvals, and invoices required in connection with this Grant 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 Grant, 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

City of Snohomish
116 Union Avenue
Snohomish, WA 98290
Attn: Owen Dennison, Senior Planner
Phone: (360) 282-3173
Fax: (360) 568-1375

Cascade Land Conservancy
615 Second Avenue, Suite 600
Seattle, WA 98104
Attn: Skip Swenson, TDR Program Director
Phone: (206) 905-6935
Fax: (206) 577-2977

11. **Time is of the Essence.** For the purposes of this Grant and each Party's obligations hereunder, time is of the essence.
12. **Governing Law and Venue.** This Grant and all issues relating to the validity, interpretation, and performance shall be governed by and interpreted under the laws of the State of Washington. Venue for disputes is in Snohomish County.
13. **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable, such provision shall be fully severable and the remainder of this Grant shall remain in full force and effect.
14. **Attorneys Fees and Costs.** In the event either party shall bring suit against the other to enforce any provision of this Grant, the prevailing party in such suit shall be entitled to recover its costs, including reasonable attorney's fees, incurred in such suit from the losing party.
15. **Entire Agreement.** This Grant, together with attachments or addenda, represents the entire and integrated Grant between the City and CLC, and supersedes all prior negotiations, representations, or agreements written or oral. This Grant may be amended only by written instrument signed by both the City and CLC.
16. **Counterparts.** This Grant may be executed in counterparts.

Attachments:

1. Exhibit "A", Scope of Work (including: City of Snohomish Sub-Area Plan/Planned Action EIS, Scope and Justification for Grant Funding (Attachment "1") and Subarea Planning Progress Report to CLC (Attachment "2"))
2. Exhibit "B", Meeting Schedule

IN WITNESS WHEREOF, CLC and the City have executed this Grant as of the date and year written below.

City of Snohomish

Cascade Land Conservancy

Larry Bauman 6/25/09
By: LARRY BAUMAN
City Manager

Casey O'Connor
By: CASEY O'CONNOR
Executive Vice President

Dated:

Dated: 6-22-09

Grant K. Weed by *Grant K. Weed*
By: GRANT K. WEED
City Attorney

Dated:

Torchie Corey
By: TORCHIE COREY
City Clerk

Dated: 6/29/09

Exhibit A: Scope of Work

#	Deliverable	Date to be completed
1	Commencement of subarea planning, infrastructure analysis, economic analysis, and environmental review by City in accordance with Attachment 1 (City of Snohomish Sub-Area Plan/Planned Action EIS, Scope and Justification for Grant Funding).	August 1, 2009
2	Interim Subarea Planning Progress Report to CLC (Attachment 2)	September 30, 2009
3	Interim Subarea Planning Progress Report to CLC (Attachment 2)	December 31, 2009
4	Interim Subarea Planning Progress Report to CLC (Attachment 2)	March 31, 2010
5	Interim Subarea Planning Progress Report to CLC (Attachment 2)	June 30, 2010
6	Interim Subarea Planning Progress Report to CLC (Attachment 2)	September 30, 2010
5	Complete subarea planning, infrastructure analysis, economic analysis and environmental review in accordance with Attachment 1 (City of Snohomish Sub-Area Plan/Planned Action EIS, Scope and Justification for Grant Funding).	November 30, 2010
6	Final report to CLC, including a copy of final subarea plan and environmental review.	December 31, 2010
7	CLC completes review of final report	February 28, 2011