

## MEMORANDUM OF AGREEMENT FOR LAND ACQUISITION

This Memorandum of Agreement ("Agreement") is entered into on this 7<sup>th</sup> day of Dec, 2010, by and between Kittitas County, a Washington County, ("County") and Cascade Land Conservancy, a Washington non-profit organization, ("CLC") (sometimes collectively referred to as the "parties" or individually as a "party") to establish the principles under which the parties will endeavor to acquire a conservation easement on certain agricultural property, as desired by Kittitas County.

**WHEREAS**, The County has adopted Comprehensive Plan GPO 2.1, with the goal to maintain and enhance Kittitas County's natural resource industry base, including but not limited to productive agriculture resources; and

**WHEREAS**, The County has identified that the acquisition of conservation easements on working farms and ranches is one method to support its agriculture industry base and ensure that agricultural lands are not converted to incompatible uses; and

**WHEREAS**, CLC has as its mission the conservation of land with significant conservation value, including the preservation of working farms and forests; and

**WHEREAS**, CLC and the County have identified that property commonly known as the Triple Creek Ranch, legally described on Exhibit A hereto, as a valuable agricultural property; and

**WHEREAS**, The County and CLC agree that the Triple Creek Ranch would be a worthy candidate for acquisition of a conservation easement, in support of the County's natural resource industry goals and other land use and economic interests of the County; and

**WHEREAS**, The County and CLC have begun negotiations with the owner of Triple Creek Ranch; and

**WHEREAS**, CLC has pursued and secured grant awards under federal and state farmland preservation programs for funding to conserve the land, and through this process CLC has incurred costs to facilitate the acquisition of a conservation easement; and

**WHEREAS**, The parties desire to establish an agreed arrangement under which CLC will pursue and assist the County to pursue negotiation and acquisition of conservation easements on Triple Creek Ranch.

**NOW, THEREFORE**, The County and CLC agree as follows:

1. CLC shall contact the owner(s) of the Triple Creek Ranch and endeavor to negotiate a Purchase and Sale Agreement and easement terms for a conservation easement on approximately 260 acres of the 400 acre property

(hereafter, the "Project"). The County shall have final approval of the Purchase and Sale Agreement and conservation easement terms before executing these documents.

2. CLC shall continue to coordinate funding for the Project through the federal Natural Resources Conservation Service (NRCS) farmland protection program, the Washington State Recreation and Conservation Office (RCO) farmland protection program, and, if necessary, through such other grant and funding programs as CLC in its discretion determines are reasonable avenues to obtain funding for the Project.
3. The County entered into a contract for funding with Washington State RCO to secure the State grant award for the Project. CLC agrees to enter into a contract with NRCS to secure the federal grant award for the Project. If monies bestowed from the State and Federal grants for this Project are not the original amount that was promised when the grant agreements were executed, the County reserves the right to terminate the Project, this Agreement, and any further negotiations with the property owner.
4. CLC agrees to be the coordinating agent between itself, the landowner, the state and federal grant agencies, and the County, in pursuing the Project. CLC agrees to undertake the negotiation and drafting of the purchase and sale agreement and conservation easement. CLC agrees to provide staff support to guide the Project through acquisition, including title review and escrow coordination.
5. The County agrees to pay CLC for staff time and actual expenses to the extent that the same are covered costs reimbursable under the grants. The County agrees to promptly submit such costs for reimbursement, including those past CLC costs incurred for the project as detailed on Exhibit B.
6. After County approval of the terms and language, CLC may either assign a fully executed purchase and sale agreement to the County, or it may complete the acquisition and convey the resulting conservation easement to the County, which may be transferred in a simultaneous closing, or CLC and the County may agree to be co-holders of the conservation easement.
7. The County agrees to pay directly all remaining expenses associated with the acquisition, including for environmental assessments, title commitments and policies, etc., that are reimbursable under the State grant.
8. If terms of the purchase and sale agreement and the language of the conservation easement do not meet the County's approval, CLC will work with all parties to modify the agreement and easement. If the terms of the purchase and sale agreement and the conservation easement cannot be agreed

upon by the Parties, the County reserves the right to terminate this Agreement and its involvement with the Project as described below.

9. This Agreement shall expire when the Project closing occurs, or December 31, 2011, whichever occurs latest. The parties agree that the term of this Agreement may be extended in writing by mutual agreement.
10. Either Party may terminate this Agreement and its involvement with the Project upon fifteen (15) days written notice either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the Party's last known address for the purposes of giving notice under this paragraph; provided, however, that sections 5 and 7 shall survive termination of this Agreement for all costs incurred by CLC through the date of termination.
11. **Miscellaneous Provisions**
  - (a) **AUTHORITY.** Each party to this Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Agreement and that its execution, delivery, and performance of this Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
  - (b) **AFFILIATES, SUCCESSORS, AND ASSIGNS.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
  - (c) **INTEGRATED AGREEMENT; MODIFICATION.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations and representations. This Agreement may not be modified except in writing signed by the parties.
  - (d) **INTERPRETATION.** Each party acknowledges that it and its legal counsel have reviewed this Agreement. The parties agree that the terms and conditions of this Agreement shall not be construed against any party on the basis of such party's drafting, in whole or in part, of such terms and conditions.
  - (e) **CHOICE OF LAW & VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington without regard to conflict of law provisions. In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Kittitas.

- (f) **ATTORNEYS' FEES.** Should any legal action or proceeding be commenced by either party in order to enforce this Agreement or any provision hereof, or in connection with any alleged dispute, breach, default, or misrepresentation in connection with any provision herein contained, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in connection with such action or proceeding, including costs of pursuing or defending any legal action, including, without limitation, any on appeal, discovery or negotiation and preparation of settlement arrangements, in addition to such other relief as may be granted.
- (g) **SEVERABILITY.** If any provision of this Agreement is held to be invalid or unenforceable, such provision will not affect or invalidate the remainder of this Agreement, and to this end the provisions of this Agreement are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Agreement.
- (h) **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Agreement.
- (i) The Director of Public Works shall administer this agreement.
- (j) **TREATMENT OF ASSETS AND PROPERTY.** No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.
- (k) **IMPROPER INFLUENCE.** Each party agrees, warrants and represents that it did not and will not employ, retain or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining or extending this Agreement. Each party agrees, warrants and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining or extending this Agreement.
- (l) **MAINTENANCE AND AUDIT OF RECORDS.** Each party shall maintain books, records, documents and other materials relevant to its performance under this Agreement. These records shall be subjected to inspection, review and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records, documents and other materials for the applicable retention period under federal and Washington law.

- (m) CONFLICT OF INTEREST. The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, in this Agreement which gives rise to a conflict of interest
- (n) INDEMNIFICATION. Each party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent permitted by law, and further agrees to save, indemnify, defend, and hold the other party harmless from any such liability. It is further provided that no liability shall attach to the parties by reason of entering into this contract except as expressly provided herein.
- (o) HEADINGS. The headings of sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

DATED: 12-20-2010

CASCADE LAND CONSERVANCY

  
NAME: \_\_\_\_\_


Casey O'Connor  
Executive Vice President  
TITLE: \_\_\_\_\_

ADDRESS:  
615 Second Ave. Suite 600  
Seattle, WA 98104

DATED: 12/07/10

BOARD OF COUNTY  
COMMISSIONERS, KITTITAS  
COUNTY, WASHINGTON

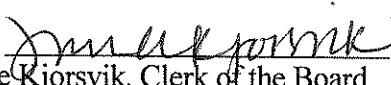
  
Mark McClain, Chairman

  
Paul Jewell, Vice Chair

  
Alan Crankovich, Commissioner



ATTEST:

By:   
Julie Kjosvick, Clerk of the Board  
Date: 12/07/10

APPROVED AS TO FORM:

By: \_\_\_\_\_

Stephanie U. Happold  
Deputy Prosecuting Attorney  
Date: \_\_\_\_\_

# EXHIBIT A

## LEGAL DESCRIPTION

Parcel Number: 114134

Map Number: 18-19-05000-0021

Situs: 09720 \Wilson Creek Road, Ellensburg

Legal: Acres 260.40, CD 10201: Sec. 5; TWP. 18; Rge. 19; PTN. Of the W ½ Section; less 10.95 Co.  
Rd. Acres

Current Owner: Stokes, Chester Vernon



## EXHIBIT B

Triple Creek Ranch - Cascade Land Conservancy Project Budget

**Revenue**

Contributions  
Grants  
Contracts  
Fee for Service  
Donations  
% of Sale Price  
Stewardship Revenue  
Hard Costs Recovered  
Misc. Revenue  
Misc. Revenue  
Opportunity Fees

**Source**

State and Federal Farmland Grants
Kittitas County

\$	-
\$	632,000
\$	-
\$	-
\$	-
\$	-
\$	-
\$	16,250
\$	-
\$	-
\$	-

**Restricted to Stewardship**

Stewardship Income  
Stewardship Fund

Project Revenue

\$	-
\$	-

Stewardship Revenue

**Staff Revenue**

Staff Revenue

**Total Revenue**

**Transaction Expense Estimate**

**Hard Costs**

**Acquisition Costs**

Purchase Price (Land/CE)  
Appraisals  
Title  
Closing/Escrow/Recording  
Environmental Site Assessment  
Surveys  
Stewardship Due Diligence

**Source**

State and Federal Farmland Grants
Kittitas County

\$	632,000
\$	11,250
\$	-
\$	-
\$	-
\$	-
\$	-
\$	-
\$	-

**Holding Costs**

Property Taxes	\$ -
Interest	\$ -
<b>Title Transfer</b>	
Title Insurance	\$ -
Escrow	\$ -
Recording	\$ -
Excise Taxes	\$ -
<b>Misc. Costs</b>	
Transportation	\$ -
Misc.	\$ -

**Consulting**

Consultant Name	Hours	Rate		
	0	\$ -	\$	-
	0	\$ -	\$	-
Consulting Subtotal				

Expenses Subtotal

**Staff Costs**

Note: Internal cost of staff time; if paid external rates, note in revenue section

		Hours	Internal Rate		
Conservation Director	Min. Rate	125	\$ 40	\$	5,000
Project Manager	Min. Rate	0	\$ 35	\$	-
Project Associate	Min. Rate	0	\$ 35	\$	-
General Counsel		0	\$ 60	\$	-
Gene/Michelle		0	\$ 60	\$	-
VP Property Services	Min. Rate	0	\$ 60	\$	-
Outside Counsel		0	\$ 300	\$	-
Staff Costs Subtotal					

**Total Expense**

Subtotals

\$ 648,250
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\$ -

\$ 648,250
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\$ 643,250
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\$ -

\$ -

\$ -

\$ -

\$ 643,250

\$ 5,000

\$ 648,250