

AFTER RECORDING RETURN TO:

Alderwood Water District
Attn: Arden Blackledge
3626 156th St. S.W.
Lynnwood, WA 98037

CONFORMED COPY

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04/02/2001 10:37 AM Snohomish
P.0007 RECORDED County

**INTERLOCAL AGREEMENT
BETWEEN
SNOHOMISH COUNTY AND THE CLEARVIEW GROUP
FOR
CATHCART, BEAR CREEK AND LITTLE BEAR CREEK BASIN
HABITAT CONSERVATION MEASURES**

WHEREAS, the Snohomish County Parks Department and Snohomish County Surface Water Management have documented the need to protect and where possible, improve fish habitat conditions in the Cathcart, Bear Creek, and Little Bear Creek Basins;

WHEREAS, the Snohomish County Executive and Snohomish County Council have determined that it is consistent with the Snohomish County Comprehensive Land Use Plan, Snohomish County Parks and Recreation Plan, ESA Salmon Conservation Early Action Program and in the best public interests of its residents to take appropriate measures to improve and/or protect the habitat of salmonids listed or proposed for listing under the Endangered Species Act ("ESA");

WHEREAS, the Snohomish County Parks Department has documented the need to secure an additional \$50,000 of funding to augment the Snohomish River Confluence Reach Restoration Project located in the Cathcart Basin (Snohomish River Watershed), and to secure additional funding to complete a planned acquisition of 340 acres of timber rights within a previously acquired 664-acre parcel of land located in the Bear Creek Basin headwaters (Lake Washington Watershed). Both of the proposed projects and/or acquisitions cited above are located within Snohomish County;

WHEREAS, Snohomish County Surface Water Management has identified the need for a Drainage Inventory and Culvert Prioritization Study of the Little Bear Creek Basin (Lake Washington Watershed) for the purpose of managing stormwater flows resulting from new development and maintaining adequate flow and habitat conditions for salmonids in the Basin; and

WHEREAS, the Clearview Group, a consortium of water purveyors located in Southwest Snohomish County (Alderwood Water District, Silver Lake Water District, Cross Valley Water District) seeking to construct a water supply pipeline and reservoir project, have agreed pursuant to ESA Section 7 consultations with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS), to contribute to Snohomish County for habitat conservation purposes: \$50,000 for the Snohomish River Confluence Reach Restoration Project in the Cathcart Basin; \$200,000 for timber right acquisition in the Bear Creek Basin headwaters; and \$50,000 to advance development of a Little Bear Creek Basin Drainage Inventory and Culvert Prioritization Study;

NOW, THEREFORE, the parties agree as follows:

I. GENERAL CONDITIONS

1.1 Parties. This Agreement is made by and between the Clearview Group, a joint administrative entity formed by interlocal agreement pursuant to chapter 39.34 RCW, hereinafter referred to as CLEARVIEW, and Snohomish County, a political subdivision of the State of Washington, hereinafter referred to as COUNTY, under authority of the Interlocal Cooperation Act, chapter 39.34 RCW.

1.2 Purpose. The purpose of this Agreement is to define responsibilities and obligations of the parties relating to funding and implementation of the Snohomish River Confluence Reach Restoration, the Bear Creek Basin timber rights/property acquisition program, and the Little Bear Creek Basin Drainage Inventory and Culvert Prioritization Study.

1.3 Term. This Agreement shall commence upon execution of the parties and recording with the Snohomish County Auditor and shall remain in effect until terminated as provided herein.

1.4 Termination.

1.4.1 Termination upon Completion. This Agreement shall be terminated upon the mutual and complete performance by the Parties of the Duties described in Sections II and III of this Agreement.

1.4.2 Termination by CLEARVIEW. CLEARVIEW may immediately terminate this Agreement by providing written notice to the COUNTY in the event of failure of funding for its duties described in Section III of this Agreement.

1.4.3 Termination by the COUNTY. The COUNTY may immediately terminate this Agreement by providing written notice to CLEARVIEW that the COUNTY

cannot or will not perform the duties described in Section II of this Agreement in the event no comparable project is substituted as described further in Section 1.5 below.

1.5 Change of Project; Treatment of Assets. In the event the COUNTY determines it is unable to perform any or all of the projects described in Section II below, whether due to funding, regulatory and permitting issues, or prioritization of projects in the best interest of the public, the COUNTY will work with CLEARVIEW to substitute a comparable project benefiting the same drainage basin and species for the project which the COUNTY does not undertake. In the event the parties are unable to find a comparable substitute project, the amount designated under this Agreement for the project which will not be undertaken will be refunded to CLEARVIEW with interest as may be required by state or local law.

1.6 Amendments. This Agreement may be amended only upon written agreement of the parties, executed in the same manner as provided by law for the execution of this Agreement. This Agreement shall constitute the full and complete agreement between the parties.

II. DUTIES OF THE COUNTY.

2.1 Snohomish River Confluence Reach Restoration Project - Cathcart Basin.

2.1.1 The COUNTY, upon receiving \$50,000 from CLEARVIEW dedicated to implement the Snohomish River Confluence Reach Restoration Project (Project) in the Cathcart Basin, shall deposit said monies in the Surface Water Management Rivers and Habitat CIP fund, and proceed in a timely manner to complete the feasibility study and design work, to acquire the necessary permits and to engage in all appropriate state/federal agency consultation processes required to effect the restoration Project.

2.1.2 The COUNTY shall inform CLEARVIEW in writing within ten (10) business days after the date it has completed all appropriate state/federal consultations, secured all appropriate state/federal permits, and completed the Project.

2.1.3 The COUNTY shall note CLEARVIEW's contribution to the restoration project in any press release it prepares that relates to the Project.

2.2 Timber Rights Acquisition - Bear Creek Basin.

2.2.1 The COUNTY, upon receiving \$200,000 from CLEARVIEW dedicated for timber rights acquisition in the Bear Creek Basin headwaters, shall deposit said monies in the Parks 309 Capital Facilities fund, and proceed in a timely manner with its planned acquisition of 340 acres of timber rights, more or less, within the 664-acre parcel of land within the Bear Creek Basin previously acquired by the County in fee simple.

2.2.2 The COUNTY shall inform CLEARVIEW in writing within ten (10) business days after the date the Bear Creek Basin timber rights acquisition has occurred, and provide information confirming the number of acres purchased, and the general habitat characteristics/value of the timber rights acquired.

2.2.3 The COUNTY shall note CLEARVIEW's contribution to the COUNTY's timber rights acquisition in any press release it prepares that relates to said acquisition.

2.3 Little Bear Creek Basin Drainage Inventory and Culvert Prioritization Study.

2.3.1 The COUNTY, upon receiving \$50,000 from CLEARVIEW dedicated to advance the preparation of a Little Bear Creek Basin Drainage Inventory and Culvert Prioritization Study ("Study"), shall deposit said monies in the Surface Water Management 113 NPDES fund, and make good faith efforts to solicit and/or secure additional monies to undertake such a Study, and once secured, shall prepare the Study in a timely manner.

2.3.2 The COUNTY shall inform CLEARVIEW in writing within ten (10) business days after the date it has completed preparation of the Study and provide three (3) hard copies of the same to CLEARVIEW.

2.3.3 The COUNTY shall note CLEARVIEW's contribution to the Study in any press release it prepares that relates to the Study.

2.4 Miscellaneous. The COUNTY shall provide upon request, and prior to the termination of this Agreement, audit information prepared by the COUNTY for the Washington State Auditor's office (Auditor) that relates to the receipt and expenditure of CLEARVIEW and other COUNTY funds dedicated to the Snohomish River Confluence Reach Restoration Project, Bear Creek Basin timber rights acquisition program, and preparation of a Little Bear Creek Basin Drainage Inventory and Culvert Prioritization Study. In the event said audit information is not prepared by the COUNTY at the direction of the Auditor, the COUNTY agrees to cooperate with CLEARVIEW in the development of such information prior to the termination of this Agreement.

III. DUTIES OF CLEARVIEW

3.1 Within (10) business days after the sixty (60) day appeal period pertaining to the Army Corps of Engineers' issuance to CLEARVIEW of a Clean Water Act Section 404 permit and Rivers and Harbor Act Section 10 permit has expired without appeal, CLEARVIEW shall issue to the COUNTY, with individual transmittal letters: (1) a check in the amount of \$50,000 for the purpose of funding and undertaking the Snohomish River

Confluence Reach Restoration Project; (2) a check in the amount of \$200,000 for the purpose of funding and completing the Bear Creek Basin timber right acquisition program; and (3) a check for \$50,000 for the purpose of preparing a Little Bear Creek Basin Drainage Inventory and Culvert Prioritization Study.

IV. ADDITIONAL REQUIREMENTS

4.1 Compliance with Laws. The COUNTY and CLEARVIEW 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.

4.2 Hold Harmless and Indemnification.

4.2.1 CLEARVIEW shall hold harmless, indemnify, and defend, at its own expense, the COUNTY, its elected and appointed officials, officers, employees and agents, from any loss or claim for damages of any nature whatsoever, arising out of CLEARVIEW's performance or failure to perform under this Agreement, including but not limited to claims by CLEARVIEW's employees or third parties, except for those damages solely caused by the negligence or willful misconduct of the COUNTY, its elected and appointed officials, officers, employees or agents.

4.2.2 The COUNTY shall hold harmless, indemnify, and defend, at its own expense, CLEARVIEW, its elected and appointed officials, officers, employees and agents from any loss or claim for damages of any nature whatsoever, arising out of the COUNTY's performance or failure to perform under this Agreement, including but not limited to claims by the COUNTY's employees or third parties, except for those damages solely caused by the negligence or willful misconduct of CLEARVIEW, its elected and appointed officials, officers, employees or agents.

4.2.3 In the event of liability for damages of any nature whatsoever arising out of the performance of CLEARVIEW and the COUNTY under this Agreement, caused by or resulting from the concurrent negligence of CLEARVIEW and the COUNTY, their respective officers, elected and appointed officials, employees and volunteers, each party's liability hereunder shall only be to the extent of that party's negligence.

4.3 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.

EXECUTED this 21st day of March, 2001.

SNOHOMISH COUNTY

Robert J. Drewel
Robert J. Drewel
Snohomish County Executive

GARY WEIKEL
Deputy Executive

CLEARVIEW GROUP

Donna Cross
Donna Cross
Commissioner - Alderwood Water
and Wastewater District

Warren "Skip" Schott
Warren "Skip" Schott
Commissioner - Cross Valley Water District

Bill Anderson
Bill Anderson
Commissioner - Silver Lake Water District

APPROVED AS TO FORM:

Angela S. Belbeck
Angela S. Belbeck
Deputy Prosecuting Attorney

REVIEWED BY RISK MANAGEMENT:

Approved () Other
Wanda Johnson

D-3