February 5, 1996

2/5 and 12/96 clerk amend

Introduced By:

Brian Derdowski Larry Phillips

Proposed No.:

96-060

MOTION NO. **9791** 

A MOTION authorizing an interlocal agreement between King County, the City of Redmond, and the Washington State Department of Transportation, for the purpose of cooperatively enhancing the fish habitat and floodplain characteristics of lower Bear Creek.

WHEREAS, the Bear Creek basin is an extremely productive spawning area for salmon, and

WHEREAS, the Bear Creek Basin Plan, as adopted by the King County Council and the Redmond City Council, identifies capital projects, habitat projects, and regulatory and land use changes to protect and enhance the existing habitat throughout the Bear and Evans Creek basins, and

WHEREAS, King County has committed extensive resources to the protection and enhancement of habitat in the upstream, unincorporated areas of Bear Creek in order to ensure the continued presence of salmon in the watershed, and

WHEREAS, physical modifications to the stream and past land use activities in lower Bear Creek have caused habitat and water quality degradation, including loss of streamside vegetation and wetland areas, lack of instream large organic debris, and lack of instream habitat diversity, specifically a lack of fish refuge and rearing areas due to straight channel configuration and steep gradient, and

WHEREAS, King County and the City of Redmond desire to improve the habitat of lower Bear Creek and implement the Basin Plan, and

WHEREAS, the Washington State Department of Transportation has scheduled a roadway improvement project on State Route 520 in the vicinity of lower Bear Creek which will require mitigation of certain specific impacts to the stream channel and adjacent wetlands, and

WHEREAS, the roadway improvement project is in the upper portion of lower Bear Creek from State Route 202 approximately 0.3 miles downstream, and

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WHEREAS, Redmond has applied to the U.S. Army Corps of Engineers for assistance in restoring the lower portion of lower Bear Creek (from the downstream end of the Washington State Department of Transportation project area to the mouth of Bear Creek), and

WHEREAS, enhancements to lower Bear Creek habitat proposed for the Washington State Department of Transportation project area and the lower portion of the creek (the proposed U.S. Army Corps of Engineers project area) will improve the fish habitat in lower Bear Creek and implement recommendations contained in the Basin Plan, and

WHEREAS, the best interests of the public are served by the Parties cooperating to resolve the existing habitat and floodplain problems of lower Bear Creek, and

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, the Parties are each authorized to enter into an agreement for cooperative action;

NOW THEREFORE, BE IT MOVED by the Metropolitan Council of King County:

The county executive is hereby authorized to enter into an interlocal agreement with the City of Redmond and the Washington State Department of Transportation; in substantially the same form as attached hereto, for the cooperative enhancement of lower Bear Creek, on condition that the preliminary design for the project is submitted to the Utilities and Natural Resources Committee of the King County Council and the Redmond Council for review. If the UNR Committee and the Redmond Council approves the preliminary design, then the final design continues. If the UNR Committee or the Redmond Council rejects the preliminary design, then the Committee or the Redmond Council shall within 15 days after submittal of the preliminary design prepare a motion for their Council's action with modifications which shall be taken to the interjurisdictional working group for consideration. If no action is taken by the Committee or the Redmond Council within 30 days of submittal, the preliminary design shall be deemed approved.

1	Prior to submittal of the preliminary design to the legislative bodies for review, the
2	interjurisdictional working group will prepare and sign a letter recommending its approval.
3	PASSED by a vote of 9 to 1 this 12th day of
4	February, 1996.
5	KING COUNTY COUNCIL KING COUNTY, WASHINGTON
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8	Kene Hanne
10	Chair
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12	ATTEST:
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15	Gusta a Feture
16	Clerk of the Council
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18	Attachment:
19	A. Lower Bear Creek Enhancement Project Interlocal Agreement
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## INTERLOCAL AGREEMENT BETWEEN KING COUNTY, THE CITY OF REDMOND, AND THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION FOR THE LOWER BEAR CREEK ENHANCEMENT PROJECT

This agreement is hereby entered into by King County, Department of Public Works, Surface Water Management Division, hereinafter referred to as "King County," the City of Redmond, a municipal corporation, hereinafter referred to as "Redmond," and the State of Washington, Department of Transportation, hereinafter referred to as "WSDOT," collectively referred to as the "Parties," for the purpose of cooperatively improving the fish habitat and floodplain characteristics of Bear Creek from Southeast Redmond Way to the confluence of Bear Creek and the Sammamish River.

WHEREAS, the Bear Creek basin is an extremely productive spawning area for salmonids, and

WHEREAS, King County and Redmond have previously cooperated to complete the Bear Creek Basin Plan ("Plan") and have entered into an interlocal agreement to implement the Plan, and

WHEREAS, the Plan identifies capital projects, habitat projects, and regulatory and land use changes to protect and enhance the existing habitat throughout the Bear and Evans Creek basins, and

WHEREAS, King County has committed extensive resources to the protection and enhancement of habitat in the upstream, unincorporated areas of Bear Creek in order to ensure the continued presence of salmonids in the watershed, and

WHEREAS, past land use activities in lower Bear Creek have caused habitat and water quality degradation, including loss of streamside vegetation and wetland areas, lack of instream large organic debris, and lack of instream habitat diversity, specifically a lack of fish refuge and rearing areas due to straight channel configuration and steep gradient, and

WHEREAS, the Plan recognizes that these deficiencies in the lower reaches of Bear Creek pose threats to spawning activity in the upper reaches of the stream system, and

WHEREAS, the Plan recommends that involved jurisdictions take the necessary measures to enhance and protect lower Bear Creek, and

WHEREAS, WSDOT has scheduled a roadway improvement project on State Route (SR) 520 in the vicinity of lower Bear Creek which will require mitigation of certain specific impacts to the stream channel and adjacent wetlands, and

WHEREAS, WSDOT's goals for mitigation of impacts are designed to be consistent with the goals for restoring lower Bear Creek as identified in the Plan, and

WHEREAS, the best interests of the public are served by the Parties cooperating to resolve the existing habitat and floodplain problems of the lower Bear Creek reach, and

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, the Parties are each authorized to enter into an agreement for cooperative action;

NOW THEREFORE, it is mutually agreed as follows:

#### I. Purpose of the Agreement

- A. The purpose of this agreement is to allow the Parties to share responsibility and combine resources to enhance and protect the lower 0.9 miles of Bear Creek.
- B. Through this agreement, the Parties establish their roles and responsibilities in the Lower Bear Creek Enhancement Project ("project") and establish the means for participation by other public and private entities in the enhancement and long-term protection of the lower Bear Creek basin.

#### II. Project Description

- A. The project area extends from the point at which Northeast Redmond Way (SR 202) crosses Bear Creek to the confluence of Bear Creek and the Sammamish River. This area is identified for restoration in the Bear Creek Basin Plan to encourage spawning, rearing and refuge activity and to enhance floodplain storage.
- B. The Parties agree that work on this project will take place in the following successive stages:

Stage I: Feasibility Review;

Stage II: Design;

Stage III: NEPA/SEPA Process and Permitting;

Stage IV: Construction, Monitoring, and Maintenance.

#### III. Project Management

A. The project shall be managed by a Project Management Team (PMT) composed of one representative from each Party to this agreement. The PMT shall reach its decisions by consensus. In the event that consensus cannot be achieved, the issue in question shall be forwarded to the Director of the King County Department of Public Works, or its successor agency, the Public

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Works Director for Redmond, and the Assistant Regional Administrator for Development for the Northwest Region of WSDOT.

- B. The PMT will establish operating, reporting, and decision-making procedures, including recommendations for cost sharing responsibilities, in conformance with each Party's practices and will distribute notice of such procedures as needed.
- The PMT shall review and approve the scope of work and budget for each C. stage of the project prior to authorizing work to begin on successive stages of the project.
- The PMT shall convene regularly during all stages of the project to D. disseminate and discuss project information such as status reports, consultant findings, and project schedule updates.
- The PMT shall sponsor an interagency workshop to solicit comments and E. environmental permit-related information and guidance from permitting agencies and staff members of the Parties.

#### IV. Responsibilities

- All Parties shall comply with all federal, state, and local laws and ordinances A. applicable to the work to be done under this agreement. This contract shall be interpreted and construed in accord with the laws of Washington.
- В. The responsibilities of the Parties for the project stages are set forth below. It is recognized that at this time Stage I responsibilities are most clearly defined. If necessary, further definition of the responsibilities of the Parties for Stages II-IV of the project may be added to this agreement by amendment, as described in Section VII of this agreement.
- C. Stage I: Feasibility Review. The feasibility review includes a compilation and analysis of existing information regarding the current and potential habitat value of the project area and a discussion of habitat enhancement alternatives including preliminary cost estimates.

#### King County shall:

- 1. Use its existing Bear Creek contracting authority to hire a consultant to perform the tasks listed for Stage I in the Consultant Scope of Work (attached as Exhibit A to this agreement and incorporated by reference herein).
- Manage the consultant to ensure timely completion of Stage I tasks. 2.

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3. Convene the PMT on a regular basis so that the PMT can fulfill its duties as discussed in Section III of this agreement.

4. Provide consultant work products to the PMT for review by WSDOT and Redmond.

#### WSDOT shall:

- 1. Review all project work products prepared by the consultant to determine relationships with proposed SR 520 construction activities.
- 2. Provide to the PMT for distribution to the Parties all past and current studies, notes, reports, and plans that are related to habitat and floodplain improvements in the project area.

#### Redmond shall:

- Review all project work products prepared by the consultant to determine relationships with Redmond land use regulations, comprehensive plan policies, and any municipal or private development proposals subject to Redmond's permitting authority.
- 2. Provide to the PMT for distribution to the Parties all past and current studies, notes, reports, and plans that are related to habitat and floodplain improvements in the project area.
- D. Stage II: Design. The work to be accomplished in this stage includes both preliminary and final design work for the project as informed by the Feasibility Review in Stage I. Prior to submittal of the preliminary design to the legislative bodies for review, the interjurisdictional working group will prepare and sign a letter recommending its approval. Within King County, the preliminary design of the project must be submitted to the Utilities and Natural Resources Committee of the Council for review. Within Redmond the preliminary design of the project shall be submitted for review to the Redmond Council. If the UNR Committee and the Redmond Council approves the preliminary design then final design will continue. If the UNR Committee or the Redmond Council rejects the preliminary design, then the Committee or Redmond Council shall within 15 days prepare a motion for their Council's action with modifications which shall be taken to the interjurisdictional working group for consideration. If no action is taken by the Committee or the Redmond Council within 30 days of submittal, the preliminary design shall be deemed approved.

King County shall:

- Manage a consultant to ensure timely completion of all tasks listed for Stage II in the Scope of Work.
- 2. Provide consultant work products to the PMT for review by WSDOT and Redmond.

#### WSDOT:

- 1. May incorporate by reference any published information generated during
  Stage II in any documents prepared by WSDOT for any of its projects.
- 2. Shall review Stage II work products prepared by the consultant to determine relationships with proposed SR 520 construction activities.

#### Redmond shall:

- Review Stage II work products prepared by the consultant to determine relationships with Redmond land use regulations, comprehensive plan policies, and any municipal or private development proposals subject to Redmond's permitting authority.
- E. Stage III: NEPA/SEPA Process and Permitting. The objectives of Stage III are to complete all required environmental impact analyses and obtain all required permits for construction of the project.

#### Redmond shall:

- 1. Serve as lead agency on all required environmental determinations.
- 2. Serve as lead agency to obtain any required permits.
- F. Stage IV: Construction, Monitoring, and Maintenance. The Parties will work together as set forth below to construct the project as designed, monitor the project to ensure that it is functioning as desired, and perform any necessary maintenance of the project.

#### King County shall:

- Manage a consultant to ensure timely completion of all tasks listed for Stage IV in the Scope of Work.
- Provide consultant work products to the PMT for review by WSDOT and Redmond.
- 3. Perform project monitoring for a period of two years, or the minimum period required by permit agencies, after completion of construction. If during the two-year monitoring period maintenance work is needed (for example, revegetation, modifications to stream channel alignment), King County shall work with the other Parties to determine appropriate

maintenance actions and the responsibilities of the Parties in taking those actions.

- 4. Provide to the PMT, for subsequent review by WSDOT and Redmond, any monitoring data or monitoring reports prepared.
- 5. Transfer monitoring responsibilities to Redmond after King County's monitoring period is completed.

#### WSDOT shall:

- 1. Grant to King County, for use by its consultant, right-of-way required to conduct construction activities.
- Review any monitoring data or monitoring reports prepared by King County.

#### Redmond shall:

- Grant to King County, for use by its consultant, any easements,
   right-of-way, or other access required to conduct construction activities.
- Review any monitoring data or monitoring reports prepared by King County.
- 3. Assume monitoring of the project after King County's monitoring period is complete.
- 4. Continue the monitoring program for a minimum of an additional two years.
- 5. Any changes proposed to the monitoring program should be reviewed and approved by the other Parties.
- Add the project to its inventory of facilities and develop and implement a
  maintenance program designed to ensure that the project is functioning as
  designed and constructed.

#### V. Costs

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- A. The costs to the Parties for the project stages are set forth below. It is recognized that at this time Stage I costs are most clearly defined. If necessary, further definition of the costs to the Parties for Stages II-IV of the project may be added to this agreement by amendment, as described in Section VII of this agreement. The costs to the Parties may change as funding becomes available for the project from other sources.
- B. Stage I: Feasibility Review

1.	The Parties agree that the consultant costs for Stage I of the project shall
	be paid for by WSDOT and Redmond in equal shares. The consultant
	costs for Stage I of the project shall not exceed \$100,000.

- 2. The Parties agree that if alternative sources of project support become available the Consultant Scope of Work (Exhibit A) and consultant costs should be reduced to reflect the lower level of consultant support needed.
- 3. Each Party shall pay for all of its own staff costs for Stage I of the project.

#### C. Stage II: Design

- 1. The Parties agree that the consultant costs for this stage of the project shall be paid for by WSDOT. The consultant costs for Stage II of the project shall not exceed \$200,000.
- 2. Each Party shall pay for all of its own staff costs for Stage II of the project.

#### D. Stage III: NEPA/SEPA Process and Permitting

- The Parties agree that the costs and cost shares for Stage III shall be determined at a later date through amendment to this agreement as provided for in Section VII.
  - E. Stage IV: Construction, Monitoring, and Maintenance
- 1. The Parties agree that the construction costs for this stage of the project shall be paid for by WSDOT. The construction costs, exclusive of right-of-way costs, for Stage IV of the project are currently estimated to be \$1,768,000. The final costs and cost shares for Stage IV shall be determined at a later date through amendment to this agreement as provided for in Section VII.

#### VI. Billing and Payment

The Parties agree to the following provisions regarding billing and payment.

- A. King County shall:
- 1. Review and approve for payment all invoices submitted to King County by the consultant for the project.
  - 2. Invoice Redmond for approved consultant costs.

#### B. Redmond shall:

- 1. Forward all invoices to WSDOT and work with WSDOT to cooperatively pay for the invoices in a manner designated by the PMT.
  - 2. Pay King County for invoices within 60 days of receipt.

#### C. WSDOT shall:

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- 1. Work with Redmond to cooperatively pay for all invoices in a manner designated by the PMT.
- D. Nothing herein shall be construed as obligating the Parties to expend money in excess of appropriations authorized by law and administratively allocated for this work.

#### VII. Duration, Termination, and Amendment

The Parties agree to the following:

- A. This agreement is effective upon signature by the Parties and remains in effect until December 31, 2005.
- B. This agreement may be terminated by any Party upon 30 days written notice. In the event of termination, payment will be made for work performed to the date of termination in the proportion agreed to by the Parties.
- C. This agreement may be amended, altered, clarified, or extended only by the written agreement of the Parties hereto. An equitable adjustment in cost or period of performance or both may be made if required by the change.
  - D. This agreement is not assignable by any Party, either in whole or in part.
- E. This agreement is the complete expression of the terms hereto and any oral or written representations or understandings not incorporated herein are excluded. The Parties recognize that time is of the essence in the performance of the provisions of this agreement. Waiver of any default shall not be deemed to be waiver of any subsequent default. Waiver of breach of any provision of this agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the agreement unless stated to be such through written approval by the Parties which shall be attached to the original agreement.

#### VIII. Counterparts

This agreement may be executed in counterparts.

#### IX. Indemnification and Hold Harmless

The Parties agree to the following:

Each of the Parties shall protect, defend, indemnify, and save harmless the other Parties, their officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, each of the Parties' own or combination of Parties' negligent acts or omissions. Each of the Parties agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the

	Tarties, by mutual negotiation, hereby warves, with respect to the other rathes only, any	
2	immunity that would otherwise be available against such claims under the Industrial	
3	Insurance provisions of Title 51 RCW. In the event that any of the Parties or combination	on
4	of Parties incurs any judgment, award, and/or cost arising therefrom, including attorneys	3,
5	fees, to enforce the provisions of this Article, all such fees, expenses, and costs shall be	
6	recoverable from the responsible Party or combination of Parties to the extent of that	
. 7	Party's/those Parties' culpability.	
8	IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the	e
9	day of, 19	
10		
11 12	Approved as to Form King County:	
13		
14 15		
16	By:	
17 18	Title: Deputy Prosecuting Attorney Title: King County Executive	
19 20 21 22	Approved as to Form  Washington State  Department of Transportation	
23		
24 25	By:	
26	Title:	
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29 30	Approved as to Form City of Redmond:	
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33	By:	
34	Title: Title:	

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# EXHIBIT A CONSULTANT SCOPE OF WORK LOWER BEAR CREEK ENHANCEMENT PROJECT

#### Introduction

The King County Surface Water Management (SWM) Division and the City of Redmond Stormwater Division, as the lead regional surface water management jurisdictions for lower Bear Creek, are implementing a number of projects identified in the Bear Creek Basin Plan. Enhancement of fish habitat in lower Bear Creek is identified in the Bear Creek Basin Plan as a high priority project to be pursued by King County and the City of Redmond. Presently, the area from the mouth of Bear Creek to SR 202 provides very little fish habitat. Planned growth and transportation-related projects provide opportunities for improving fish habitat in the lower Bear Creek corridor. The Washington State Department of Transportation, the U.S. Army Corps of Engineers, the City of Redmond, and King County are proposing complementary projects in the lower Bear Creek area which will substantially enhance and improve existing fish habitat and other natural resources in the area.

#### **Project Area**

The location of the proposed enhancement projects in the lower mile of Bear Creek has been divided into two sub-areas — the lower project sub-area (from the mouth of Bear Creek to the upstream end of the proposed Winmar development) and the upper project sub-area (from SR 202 to the upstream end of the proposed Winmar development). The consultant should provide cost estimates for (1) the tasks listed below under *Stage I: Feasibility Review* for the upper sub-area, and (2) coordination activities with the Corps project in the lower sub-area.

#### **Project Goal**

The goal of the upper sub-area project addressed by this scope of work is to provide a comprehensive analysis and plan for fish habitat enhancements in this area and to provide for any needed coordination activities required to link this upper sub-area project with the lower sub-area project.

The lower sub-area is proposed to be enhanced by the U.S. Army Corps of Engineers under the 1135 Program, as requested by the City of Redmond. Activities taking place under both projects will be coordinated to maximize the benefits to the public and to complement stream and habitat restoration work taking place in the upper Bear Creek Basin.

The upper sub-area project addressed by this scope of work includes four stages: (I) Feasibility Review; (II) Design; (III) NEPA/SEPA Process and Permitting; and (IV) Construction, Monitoring, and Maintenance. Only Stage I is included at this time. This scope of work will be amended to reflect the tasks required for the other stages as the project is further developed.

### STAGE I: FEASIBILITY REVIEW

#### TASK 1: Design Development

The purpose of this task is to develop and present information about alternatives for the Lower Bear Creek Enhancement Project so that a design concept(s) can be selected for budgeting, detailed design, and—upon receipt of necessary approvals—construction and ongoing monitoring and maintenance. All alternatives considered should reflect the occurrence of proposed development activity in Redmond (the proposed Winmar development) and the future alignment of SR 520.

As a basis for design development and analysis, existing conditions shall be summarized. Included in this information shall be a detailed, item-by-item identification and description of current fish habitat problems in the upper project sub-area. Available for reference in this



effort is the report entitled "Lower Bear Creek Enhancement Project Conceptual Design Report" by Watershed Dynamics, Inc., dated October 17, 1994. In addition, watershed information collected in Bear Creek by WSDOT should be included as a source of information.

Conceptual design and information for two options shall be presented. The two options are:

Option A: Upper Reach — relocate channels, revegetate, enhance stream habitat, and widen floodplain (moderate).

Upper Reach — relocate channels, revegetate, enhance stream habitat, Option B: and widen floodplain (major).

For each of these options, the following information shall be developed at preliminary-level accuracy:

- Configuration, appearance, features. а.
- b. Benefits:
  - Fisheries problems addressed (an item-by-item analysis plus overview);
  - Other benefits (which may include amenities);
  - Compatibility with design on the lower project sub-area.
- Significance of the benefits in terms of the Bear/Evans Creek System and C. regional issues.
- d. Evaluation of project impacts:
  - Geomorphological issues;
  - Fisheries, mussels;
  - Other.
- Significance of the impacts (can adverse occurrences be easily rectified or are e. consequences more severe?)
- f. Costs estimates for the upper project sub-area only:
  - Design:
  - NEPA/SEPA Process and Permitting;
  - Construction;
  - Monitoring/Ongoing Maintenance.

Task 1 shall include a summary of this information for the options, analyses, and conclusions/recommendations.

#### TASK 2: Interagency Workshop

Based on the results of Task 1, hold an interagency workshop to present the Task 1 Report and to obtain comments and permit-related information and guidance from an interagency team, including representatives from WSDOT, SWM Division, Redmond, Muckleshoot Tribe, the Corps, and King County Department of Development and Environmental Services, along with any others deemed necessary by WSDOT, SWM Division, and Redmond.

#### TASK 3: Administration

Prepare up to three monthly progress reports together with monthly billings.

Attend up to three project review meetings (once per month) with SWM, Redmond, WSDOT, and other involved parties to discuss the project. Conclusions of these meetings will be documented in the monthly progress reports. A budget allocation has been made for one additional meeting that may be required at critical or unforeseen problem stages of the project.

Provide project quality assurance reviews and documentation.