

RESOLUTION NO. 05.394

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT AMONG PARTICIPATING JURISDICTIONS FOR THE WATERSHED BASINS WITHIN WATERSHED RESOURCE INVENTORY AREA (WRIA) 9

WHEREAS, Chapter 39.34 RCW authorizes cities and counties to enter into interlocal agreements, as necessary, to work together on issues requiring joint action of the parties; and

WHEREAS, in 2001 King County and the Cities of Algona, Auburn, Burien, Covington, Des Moines, Enumclaw, Federal Way, Kent, Maple Valley, Normandy Park, Renton, SeaTac, Seattle, Tukwila, and Tacoma entered into an Interlocal Agreement for the Watershed Basins within the Water Resource Inventory Area (WRIA) 9 (hereinafter the "Interlocal Agreement"); and

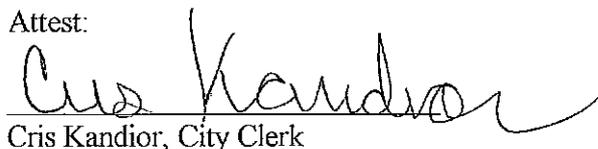
WHEREAS, the City of Black Diamond wishes to participate in the Interlocal Agreement for the purposes described therein, including but not limited to the initiation of activities related to the implementation of the *Green/Duwamish and Central Puget Sound Watershed, Water Resource Inventory Area 9 Salmon Habitat Plan, Making our Watershed Fit for a King*, published August 10, 2005 (hereinafter the "Salmon Habitat Plan"); and

BE IT RESOLVED that the City Council of the City of Black Diamond hereby authorizes the Mayor to execute an Interlocal Agreement for the Watershed Basins within Water Resource Inventory Area (WRIA) 9, a copy of which is attached hereto as Exhibit A and incorporated by this reference.

ADOPTED by the City Council at an open public meeting held on the 1<sup>st</sup> day of December, 2005.

  
Howard Botts, Mayor

Attest:

  
Cris Kandior, City Clerk

## INTERLOCAL AGREEMENT

### For the Watershed Basins within Water Resource Inventory Area 9

#### PREAMBLE

**THIS AGREEMENT** ("Agreement") is entered into pursuant to Chapter 39.34 RCW by and among the eligible county and city governments signing this agreement that are located in King County, lying wholly or partially within the management area of Watershed Resource Inventory Area ("WRIA") 9, which includes all or portions of the Green-Duwamish and Central Puget Sound forums, all political subdivisions of the State of Washington (collectively, for those signing this agreement, "parties"). The parties share interests in and responsibility for addressing long-term watershed planning and conservation for the watershed basins in WRIA 9 and wish to provide for planning, funding and implementation of various activities and projects therein.

#### MUTUAL COVENANTS AND AGREEMENTS

1. **DEFINITIONS.** For purposes of this Agreement, the following terms shall have the meaning provided for below:
  - 1.1 **ELIGIBLE JURISDICTIONS:** The governments eligible for participation in this Agreement as parties are the County of King and the Cities and Towns of Algona, Auburn, Black Diamond, Burien, Covington, Des Moines, Enumclaw, Federal Way, Kent, Maple Valley, Normandy Park, Renton, SeaTac, Seattle, and Tukwila.
  - 1.2 **WRIA 9 FORUM:** The *WRIA 9 Forum* created herein is the governing body responsible for implementing this Agreement and is comprised of designated representatives of eligible jurisdictions who have authorized the execution of and become parties to this Agreement.
  - 1.3 **WRIA 9 STEERING COMMITTEE:** The *WRIA 9 Steering Committee* referred to herein is the cooperative representational body comprised of a balance of stakeholder representatives and any other persons who are deemed by the parties to this Agreement to be appropriate to the creation of *WRIA-based Watershed Plans*.
  - 1.4 **WRIA-BASED WATERSHED PLANS:** *WRIA-based Watershed Plans* as referred to herein are those documents to be developed for WRIA 9 including its sub-basins which recommend actions related to watershed protection, restoration and salmon recovery.
  - 1.5 **WRIA SUB-FORUMS:** *WRIA Sub-Forums* as referred to herein are those cooperative representational bodies currently meeting and working on issues, preparing plans and implementing projects within watersheds. These groups are comprised of elected officials from the general purpose governments located within the watershed.

- 1.6 **MANAGEMENT COMMITTEE:** *Management Committee* as referred to herein consists of five (5) elected officials or their designees which elected officials are chosen by the *WRIA 9 Forum*, according to the voting procedures in Section 5, charged with certain oversight and administrative duties on the *WRIA 9 Forum's* behalf.
- 1.7 **SERVICE PROVIDER:** *Service Provider*, as used herein, means that agency, government, consultant or other entity which supplies staffing or other resources to and for the *WRIA 9 Forum*, in exchange for payment. The *Service Provider* may be a party to this Agreement.
- 1.8 **FISCAL AGENT:** The *Fiscal Agent* refers to that agency or government who performs all accounting services for the *WRIA 9 Forum*, as it may require, in accordance with the requirements of Chapter 39.34 RCW.
- 1.9 **STAKEHOLDERS:** Stakeholders refers to those public and private entities within the WRIA who reflect the diverse interests integral for planning for the recovery of the listed species under the Endangered Species Act, which may include but is not limited to environmental and business interests.

2. **PURPOSES.** The purposes of this Agreement include the following:

- 2.1 To provide a mechanism and governance structure for the joint funding, development, review and approval of *WRIA-Based Watershed Plans*. Such plans shall include reconnaissance, assessment and analysis of conditions and recommendations for the WRIA Forum. It is understood that the maximum financial or resource obligation of any participating eligible jurisdiction under this Agreement shall be limited to its share of the cost of developing the *WRIA-Based Watershed Plans*.
- 2.2 To provide a mechanism for securing technical assistance and any available funding from state agencies or other sources.
- 2.3 To provide a mechanism for the implementation of other habitat, water quality and flood projects with regional, state, federal and non-profit funds as may be contributed to the *WRIA 9 Forum*.
- 2.4 To provide a framework for cooperation and coordination among the parties on issues relating to the WRIA or sub-WRIA planning or to meet the requirement of a commitment by any party to participate in WRIA-based or watershed basin planning in response to any state or federal law which may require such participation as a condition of any funding, permitting or other program of state or federal agencies, at the discretion of such party to this Agreement.
- 2.5 To develop and articulate WRIA-based positions on salmon habitat, conservation and funding to state and federal legislators.

2.6 To provide for the ongoing participation of citizens and other stakeholders in such efforts and to ensure continued public outreach efforts to educate and garner support for current and future ESA efforts.

It is not the purpose or intent of this Agreement to create, supplant, preempt or supersede the authority or role of any individual jurisdiction or water quality policy bodies such as the Regional Water Quality Committee.

3. **EFFECTIVE DATE AND TERM.** This Agreement shall become effective upon its execution by at least five (5) of the eligible jurisdictions within WRIA 9 representing at least seventy per cent (70%) of the affected population, as authorized by each jurisdiction's legislative body. Once effective, this Agreement shall remain in effect for an initial term of five (5) years; provided, however, that this Agreement may be extended for such additional terms as the parties may agree to in writing.

4. **ORGANIZATION AND NATURE OF WRIA 9 FORUM.** The parties to this Agreement hereby establish a governing body for WRIA 9 and the Green-Duwamish watershed basin and associated Puget Sound drainages (hereinafter the "***WRIA 9 Forum***" the precise boundaries of which are established in Chapter 173-500 WAC, or as determined by the WRIA Forum) to serve as the formal governance structure for carrying out the purposes of this Agreement. Each party to this agreement shall appoint one (1) elected official to serve as its representative on the ***WRIA 9 Forum***. The ***WRIA 9 Forum*** is a voluntary association of the county and city governments located wholly or partially within the management area of WRIA 9 and the Green-Duwamish watershed basin and associated Puget Sound drainages who choose to be parties to this Agreement.

4.1 Upon the effective execution of this agreement and the appointment of representatives to the ***WRIA 9 Forum***, the ***WRIA 9 Forum*** shall meet and choose from among its members, according to the provisions of Section 5, five (5) elected officials or their designees, to serve as a ***Management Committee*** to oversee and direct the funds and personnel contributed under this Agreement, in accordance with the adopted annual budget and such other directions as may be provided by the ***WRIA 9 Forum***. Representatives of the ***Fiscal Agent*** and ***Service Provider*** may serve as non-voting ex officio members thereof. The ***Management Committee*** shall act as an executive subcommittee of the ***WRIA 9 Forum***, responsible for oversight and evaluation of any ***Service Providers*** or consultants, administration of the budget, and for providing recommendations on administrative matters to the ***WRIA 9 Forum*** for action, consistent with other subsections of this section..

4.1.1 It is contemplated that services to the ***WRIA 9 Forum*** and ***WRIA 9 Steering Committee*** for the year 2001 shall be provided by ***Service Provider***, King County Department of Natural Resources. The ***Management Committee***

performance of the purposes of this Agreement. In evaluating the performance of any **Service Provider**, at least every two years, the **WRIA 9 Forum** shall retain an outside consultant to perform a professional assessment of the work and services so provided.

4.2.4 The **WRIA 9 Forum** shall oversee and administer the expenditure of budgeted funds and shall allocate the utilization of resources contributed by each party or obtained from other sources in accordance with an annual prioritized list of planning activities within the WRIA during each year of this Agreement.

4.3 The **WRIA 9 Forum** may contract with similar watershed forum governing bodies or any other entities for any lawful purpose related hereto. The parties may choose to create a separate legal or administrative entity under applicable state law, including without limitation a nonprofit corporation or general partnership, to accept private gifts, grants or financial contributions, or for any other lawful purposes.

4.4 The WRIA 9 Forum shall adopt other rules and procedures that are consistent with its purposes as stated herein and are necessary for its operation.

5. **VOTING.** The **WRIA 9 Forum** shall make decisions, approve scope of work, budget, priorities and any other actions necessary to carry out the purposes of this Agreement as follows:

5.1 Decisions shall be made using a consensus model as much as possible. Each party agrees to use its best efforts and exercise good faith in consensus decision-making. Consensus may be reached by unanimous agreement of the parties, or by a majority recommendation with a minority report. Any party who does not accept a majority decision may request weighted voting as set forth below.

5.2 In the event consensus cannot be achieved, as determined by rules and procedures adopted by the **WRIA 9 Forum**, the **WRIA 9 Forum** shall take action on a dual-majority basis, as follows:

5.2.1 Each party, through its appointed representative, may cast its weighted vote in connection with a proposed **WRIA 9 Forum** action.

5.2.2 The weighted vote of each party in relation to the weighted votes of each of the other parties shall be determined by the percentage of the annual contribution by each party set in accordance with Subsection 4.2.2 in the year in which the vote is taken.

5.2.3 For any action subject to weighted voting to be deemed approved, an affirmative vote must be cast by both a majority of the parties to this Agreement and by a majority of the weighted votes of the parties to this Agreement. No action shall be valid and binding on the parties to this Agreement until it shall receive majority votes of both the total number of

parties to the Agreement and of the members representing a majority of the annual budget contribution for the year in which the vote is taken. A vote of abstention shall be recorded as a "no" vote.

6. **CREATION, APPROVAL AND RATIFICATION OF WRIA-BASED WATERSHED PLANS.**

***WRIA-based Watershed Plans*** shall be developed, drafted and recommended by the ***WRIA 9 Steering Committee***, approved by the ***WRIA 9 Forum*** and subject to ratification by the legislative bodies of the parties to this Agreement, consistent with the following:

- 6.1 The ***WRIA 9 Forum*** shall appoint a ***WRIA 9 Steering Committee***, comprised of a balance of stakeholder representatives and any other persons who are deemed by the parties to this Agreement to be appropriate to the creation of ***WRIA-based Watershed Plans***. It is intended that representatives of local general purpose governments will continue to participate on the ***WRIA 9 Steering Committee***. The ***WRIA 9 Steering Committee*** shall be responsible for the development and recommendation of ***WRIA-based Watershed Plans*** consistent with the purposes of this Agreement and shall act as an advisory body to the ***WRIA 9 Forum***. Changes in the membership or composition of the ***WRIA 9 Steering Committee*** shall be made pursuant to the voting procedures in Section 5. The ***WRIA 9 Forum*** shall establish procedures for naming and replacing representatives on the ***WRIA 9 Steering Committee***.
- 6.2 The ***WRIA 9 Forum*** shall act to approve or remand any final long-term ***WRIA-based Watershed Plan*** prepared and recommended by the ***WRIA 9 Steering Committee*** within ninety (90) days of receipt of the final plan, according to the voting procedures described in Section 5.
- 6.3 In the event that any plan is not so approved, it shall be returned to the ***WRIA 9 Steering Committee*** for further consideration and amendment and thereafter returned to the ***WRIA 9 Forum*** for decision.
- 6.4 After approval of the plan by the ***WRIA 9 Forum***, the plan shall be referred to the parties to this Agreement for ratification prior to the plan's submission to any federal or state agency for further action. Ratification means an affirmative action, evidenced by a resolution or ordinance of the jurisdiction's legislative body, by at least five jurisdictions within WRIA 9 representing at least seventy per cent (70%) of the total population of WRIA 9. Upon ratification, the ***WRIA 9 Forum*** shall transmit the ***WRIA-based Watershed Plan*** to any state or federal agency as may be required for further action.
- 6.5 In the event that either any state or federal agency to which such plans are submitted shall remand any such plan for further consideration, the plan shall be remanded to

the **WRIA 9 Forum** for consideration, which may include further referral to the **WRIA 9 Steering Committee** for recommendation on amendments thereto.

6.6 The parties agree that no **WRIA-based Watershed Plan** developed and funded pursuant to this Agreement shall be forwarded separately by any of them to any state or federal agency unless it has been approved and ratified as provided herein.

7. **OBLIGATIONS OF PARTIES; BUDGET; FISCAL AGENT; RULES.**

7.1 Each party shall be responsible for meeting its financial obligations hereunder as established in the annual budget adopted by the **WRIA 9 Forum** under this Agreement, including all such obligations related to **WRIA 9 Forum** and **WRIA 9 Steering Committee** funding, technical support, and participation in related planning projects and activities as set forth herein. It is anticipated that separate actions by the legislative bodies of the parties will be necessary from time to time in order to carry out these obligations.

7.2 The maximum funding responsibilities imposed upon the parties during the first year of this Agreement shall not exceed the amounts set forth in Exhibit A, which shall be updated annually as described in Section 4.2.2.

7.3 No later than September 1 of each year of this Agreement, the **WRIA 9 Forum** shall adopt a budget, including its overhead and administrative costs, for the following calendar year. The budget shall propose the level of funding and other (e.g. staffing) responsibilities of the individual parties for the following calendar year and shall propose the levels of funding and resources to be allocated to specific prioritized planning activities within the WRIA. The parties shall thereafter take whatever separate legislative or other actions that may be necessary to timely address such individual responsibilities under the proposed budget, and shall have done so no later than December 1st of each such year.

7.4 Funds collected from the parties or other sources on behalf of the **WRIA 9 Forum** shall be maintained in a special fund by King County as **fiscal agent** and as **ex officio** treasurer on behalf of the **WRIA 9 Forum** pursuant to rules and procedures established and agreed to by the **WRIA 9 Forum**. Such rules and procedures shall set out billing practices and collection procedures and any other procedures as may be necessary to provide for its efficient administration and operation. Any party to this Agreement may inspect and review all records maintained in connection with such fund at any reasonable time.

8. **LATECOMERS.** A county or city government in King County lying wholly or partially within the management area of WRIA 9 and the Green-Duwamish watershed basin and adjacent Puget Sound drainages which has not become a party to this Agreement within twelve (12) months of the effective date of this Agreement may become a party only with the written

consent of all the parties. The provisions of Section 5 otherwise governing decisions of the **WRIA 9 Forum** shall not apply to Section 8. The parties and the county or city seeking to become a party shall jointly determine the terms and conditions under which the county or city may become a party. These terms and conditions shall include payment by such county or city to the parties of the amount determined jointly by the parties and the county or city to represent such county or city's fair and proportionate share of all costs associated with activities undertaken by the **WRIA 9 Forum** and the parties on its behalf as of the date the county or city becomes a party. Any county or city that becomes a party pursuant to this section shall thereby assume the general rights and responsibilities of all other parties to this Agreement.

9. **TERMINATION** This Agreement may be terminated by any party, as to that party only, upon sixty (60) days' written notice to the other parties. The terminating party shall remain fully responsible for meeting all of its funding and other obligations through the end of the calendar year in which such notice is given, together with any other costs that may have been incurred on behalf of such terminating party up to the effective date of such termination. This Agreement may be terminated at any time by the written agreement of all parties. It is expected that the makeup of the parties to this Agreement may change from time to time. Regardless of any such changes, the parties choosing not to exercise the right of termination shall each remain obligated to meet its respective share of the obligations of the **WRIA 9 Forum** as reflected in the annual budget.
10. **HOLD HARMLESS AND INDEMNIFICATION.** To the extent permitted by state law, and for the limited purposes set forth in this agreement, each party shall protect, defend, hold harmless and indemnify the other parties, their officers, elected officials, agents and employees, while acting within the scope of their employment as such, from and against any and all claims (including demands, suits, penalties, liabilities, damages, costs, expenses, or losses of any kind or nature whatsoever) arising out of or in any way resulting from such party's own negligent acts or omissions related to such party's participation and obligations under this agreement. Each party agrees that its obligations under this subsection 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 party, by mutual negotiation, hereby waives, with respect to the other parties only, any immunity that would otherwise be available against such claims under the industrial insurance act provisions of Title 51 RCW. The provisions of this subsection shall survive and continue to be applicable to parties exercising the right of termination pursuant to Section 9.
11. **NO ASSUMPTION OF LIABILITY.** In no event do the parties to this Agreement intend to assume any responsibility, risk or liability of any other party to this Agreement or otherwise with regard to any party's duties, responsibilities or liabilities under the Endangered Species

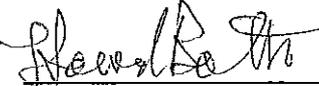
Act, or any other act, statute or regulation of any local municipality or government, the State of Washington or the United States.

12. **VOLUNTARY AGREEMENT.** This is a voluntary agreement and it is acknowledged and agreed that, in entering into this Agreement, no party is committing to adopt or implement any actions or recommendations that may be contained in a ***WRIA-based Watershed Plan*** developed pursuant to this Agreement.
13. **NO PRECLUSION OF ACTIVITIES OR PROJECTS.** Nothing herein shall preclude any one or more of the parties to this Agreement from choosing or agreeing to fund or implement any work, activities or projects associated with any of the purposes hereunder by separate agreement or action, provided that any such decision or agreement shall not impose any funding, participation or other obligation of any kind on any party to this Agreement which is not a party to such decision or agreement.
14. **NO THIRD PARTY RIGHTS.** Nothing contained in this Agreement is intended to, nor shall it be construed to, create any rights in any third party, including without limitation the ***WRIA 9 Steering Committee***, NMFS, USFWS, any agency or department of the United States, or the State of Washington, or to form the basis for any liability on the part of the ***WRIA 9 Forum*** or any of the parties, or their officers, elected officials, agents and employees, to any third party.
15. **AMENDMENTS.** This Agreement may be amended, altered or clarified only by the unanimous consent of the parties to this Agreement, represented by affirmative action by their legislative bodies.
16. **COUNTERPARTS.** This Agreement may be executed in counterparts.
17. **APPROVAL BY PARTIES' GOVERNING BODIES.** This Agreement has been approved for execution by appropriate action of each party's governing body.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement on the dates indicated below:

Approved as to form:

KING COUNTY

By: 

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

Title: MAYOR

Title: \_\_\_\_\_

Date: 12-1-05

Date: \_\_\_\_\_