



# KING COUNTY

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

## Signature Report

October 4, 2005

### Ordinance 15291

**Proposed No.** 2005-0370.2

**Sponsors** Edmonds, Dunn and von  
Reichbauer

1 AN ORDINANCE authorizing the executive to enter into  
2 interlocal agreements between King County and the city of  
3 Black Diamond for transfer to the city of Lake Sawyer  
4 park, for transfer to the city of conservation futures tax and  
5 other funds, and for commitments regarding the provision  
6 of future infrastructure needs.

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8

9 **STATEMENT OF FACTS:**

- 10 1. King County adopted the Black Diamond Urban Growth Area  
11 Agreement ("BDUGAA") through passage of Ordinance 12534 on  
12 November 25, 1996.
- 13 2. King County signed the Black Diamond Area Open Space Protection  
14 Agreement ("BDAOSPA") on June 6, 2005. Implementation of the  
15 BDAOSPA will result in the protection of approximately 2,500 acres of  
16 open space in the city of Black Diamond ("city"), the city's Urban Growth  
17 Area, and in unincorporated King County. The open space in

18 unincorporated King County includes the 1,600 acre area known as  
19 Ravensdale Ridge, the area known as Ravensdale Creek, and several  
20 parcels along the Green river for a total of approximately 2,245 acres.  
21 Implementation of the BDAOSPA will also secure easements for  
22 approximately 10 miles trail corridors to expand the regional trail system.

23 3. Pursuant to the BDUGAA, annexation of the Plum Creek West and  
24 South Annexation Areas into the city is conditioned on, among other  
25 things, the protection and conservation of 542 acres of in-city open space.

26 4. The BDAOSPA identifies the land that qualifies as in-city open space  
27 under Section 7 of the BDUGAA. The in-city open space includes the 165  
28 acre Lake Sawyer park, 50 acres of in-city forest land and 27 acres from  
29 the Ginder Creek Property.

30 5. King County and the city have agreed to terms for an interlocal  
31 agreement for the transfer of Lake Sawyer park.

32 6. The recitals in the agreement set forth relevant facts supporting and  
33 explaining the terms of the transfer and the larger transaction to preserve  
34 additional open space in the county.

35 7. Transfer of Lake Sawyer park under the terms and conditions of the  
36 attached agreement will serve an important county purpose by ensuring  
37 that the park will remain open and available to all county residents and is a  
38 key component of the land transaction to preserve thousands of acres of  
39 additional open space in King County.

40 8. King County and the city have agreed to terms for an interlocal  
41 agreement for the transfer of funds from the Conservation Futures Tax  
42 fund for a contribution to the purchase of the in-city forestland and for the  
43 transfer of funds from the conservation futures tax fund for a contribution  
44 to the purchase of Ginder Creek open space.

45 9. The recitals in the agreement set forth relevant facts supporting and  
46 explaining the terms of the transfer of the funds.

47 10. Pursuant to Section 5.2 of the BDUGAA, as a condition of annexation  
48 of land to the city, an interlocal agreement between King County and the  
49 city is required for the provision of future sewer service and any needed  
50 road improvements.

51 11. King County and the city have agreed to terms for an interlocal  
52 agreement for the provision of necessary infrastructure improvements.

53 12. The recitals in the agreement set forth relevant facts supporting and  
54 explaining the terms of the infrastructure provisions.

55 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

56 SECTION 1. The King County executive is hereby authorized to enter into  
57 an interlocal agreement, substantially in the form of the Attachment A to this  
58 ordinance, with the city of Black Diamond relating to the transfer of Lake Sawyer  
59 park to the city.

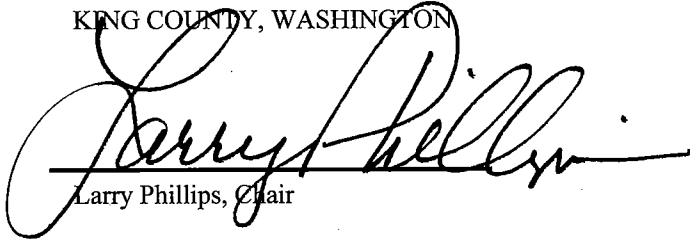
60 SECTION 2. The King County executive is hereby authorized to enter into  
61 an interlocal agreement, substantially in the form of Attachment B to this ordinance,  
62 with the city of Black Diamond relating to acquisition of open space projects.

63            SECTION 3. The King County executive is hereby authorized to enter into  
64 an interlocal agreement, substantially in the form of Attachment C to this ordinance,  
65 with the city of Black Diamond relating to the provision of infrastructure.  
66

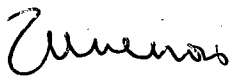
Ordinance 15291 was introduced on 8/29/2005 and passed by the Metropolitan King County Council on 10/3/2005, by the following vote:

Yes: 13 - Mr. Phillips, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Pelz, Mr. Dunn, Mr. Ferguson, Mr. Hammond, Mr. Gossett, Ms. Hague, Mr. Irons, Ms. Patterson and Mr. Constantine  
No: 0  
Excused: 0

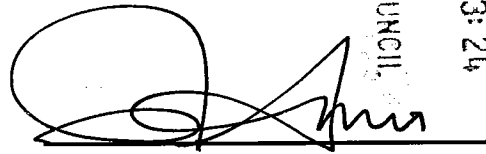
KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

  
Larry Phillips, Chair

ATTEST:

  
Anne Noris, Clerk of the Council

APPROVED this 13 day of OCTOBER 2005.

  
Ron Sims, County Executive

RECEIVED  
2005 OCT 14 PM 3:24  
CLERK  
KING COUNTY COUNCIL

**Attachments**      A. Revised Intergovernmental Land Transfer Agreement Between King County and the City of Black Diamond, dated September 15, 2005, B. Interlocal Cooperation Agreement; C. Interlocal Agreement Between King County and the City of Black Diamond Regarding the Provision of Infrastructure

**Revised Intergovernmental Land Transfer Agreement Between  
King County and the City of Black Diamond  
September 15, 2005**

Relating to the Ownership, Operation and Maintenance of Parks,  
Open Space, Recreation Facilities and Programs

This Agreement is made and entered into this day by and between the City of Black Diamond, hereinafter called "City", and King County, hereinafter called "County".

WHEREAS the City desires to own, operate, and maintain parks, open space, recreation facilities and programs and other municipal programs, facilities and property inside its boundaries, including Lake Sawyer Park; and

WHEREAS the Lake Sawyer Park qualifies as In-City Open Space under the terms of the Black Diamond Urban Growth Area Agreement dated December 1996 ("BDUGGA") and the County and the City desire to implement the BDUGGA in part through this transfer and through the protection of certain views from Highway 169 in the vicinity of the Park; and

WHEREAS the County, under the authority of RCW 36.89.050, King County Resolution 34571 and other federal, state and county laws, has acquired and developed a substantial park, recreation and open space system that depends on the continued operation of its many individual properties and facilities in order to fully serve the needs of the residents of King County and the cities within it; and

WHEREAS the County acquired the Lake Sawyer Park in part with funds from the Washington State Interagency Committee for Outdoor Recreation (IAC) to provide public outdoor recreation; and

WHEREAS the County acquired the Lake Sawyer Park in part with Open Space Bonds and Conservation Futures funds to preserve valuable riparian habitat, open space and opportunities for passive recreation; and

WHEREAS the County has taken preliminary steps to prepare a program plan for the Park, and the City intends to develop a similar plan for the Park for the benefit of the citizens of Black Diamond and King County. The City intends that the plan shall provide for a variety of uses, which may include waterfront access, trails, interpretive and educational activities, active recreation such as athletic fields, passive recreation and natural areas, parking, and restrooms; and

WHEREAS the County desires to divest itself of ownership, management, and financial responsibility for parks, open space, recreational facilities and programs inside and near the City boundaries; and

WHEREAS the County does not have a sufficient, stable source of revenue to continue to manage and maintain its parks, open space, recreational facilities and programs at current levels; and

WHEREAS the County is legally restricted from converting many of these parks, open space, and recreational facilities from their current uses without expending funds to replace the converted facilities; and

WHEREAS given the legal restriction regarding conversion of the properties, the marketability of the properties is limited and, as a result, the cost of operating the facility is approximately equal to the value of the property to the County; and

WHEREAS to the extent the City provides scholarships, reduced fees or other means of assuring access to parks and recreational programming for City residents, the City has a goal of ensuring that such scholarships or other needs-based rates and programs are available to all persons desiring to use the park and recreational programs regardless of residency, and

WHEREAS it is in the best interest of the public that the City and the County take those actions necessary to meet those desires and to cooperate in any transition to insure a smooth transition and avoid service disruption;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and the County agree as follows:

## **1. Conveyance of Title**

1.1. At the date of Closing specified in the June 6, 2005 Black Diamond Area Open Space Protection Agreement ("Open Space Agreement"), King County shall convey to the City by bargain and sale deed, subject to the conditions and exceptions set forth in this Agreement and its Exhibits, all its interest in the following listed park/recreation site(s), which, subject to correction, are generally described more fully in Exhibit A, and legally described in Exhibit B (the "Property"):

### **LAKE SAWYER PARK**

1.2. The City has reviewed Project Agreement for Project No. 97-1042A, between King County and the Washington State Interagency Committee for Outdoor Recreation ("IAC"), which provided partial funding for the acquisition of the Property, and agrees that it shall execute an amendment to the Project Agreement that substitutes the City for the County as the "Contracting Party" in the Project Agreement so that the City shall become the "Project Sponsor." The City shall execute this amendment within fifteen (15) days of execution of this Agreement, or prior to the date of Closing, whichever first occurs, with Closing being contingent on execution of this amendment.

1.3 All deeds shall also contain the following specific covenants pertaining to use, which covenants shall run with the land for the benefit of the County and the County land that makes up its public park, recreation and open space system. The County and the City agree that the County shall have standing to enforce these covenants both as a matter of contract under this Agreement, and as covenants in the deeds. These covenants shall be set forth as follows:

"The City, as required by RCW 36.89.050, covenants that the Property shall be continued to be used in perpetuity for open space, park, or recreation facility purposes."

"The City acknowledges that eastern portion of the Property depicted in Exhibit C as Area B, which contains wetlands, streams and riparian habitat, were purchased for open space purposes with funds from Open Space Bonds authorized in 1989 by King County Ordinance 9071 and with Conservation Futures funds authorized by Ordinances 10750 and 13717 and covenants that it shall abide by and enforce all terms, conditions and restrictions in Ordinances 9071, 10750 and 13717, including that the City covenants that the Property will continue to be used in perpetuity for the purposes contemplated by these Ordinances, which prohibits both active recreation and motorized recreation such as off-road recreational vehicles but allows passive recreation, that the Property shall not be transferred or conveyed except by agreement providing that the Property shall continue to be used in perpetuity for the purposes contemplated by these Ordinances, and that the Property shall not be converted to a different use than allowed by these Ordinances."

"The City covenants that it shall not use the Property in a manner that would cause the interest on County bonds related to the Property to no longer be exempt from federal income taxation."

"The City further covenants that it will not limit or restrict access to and use of the active recreation portion of the Property depicted in Exhibit C as Area A, by non-city residents in any way that does not also apply to city residents. The City covenants that if differential fees for non city residents are imposed, they will be reasonably related to the cost borne by city taxpayers to maintain, improve or operate the Property for parks and recreation purposes."

"The City further covenants that it will not limit or restrict access to and use of the open space portion of the Property depicted in Exhibit C as Area B, by County residents in any way that does not also apply to city residents. The City covenants that any and all user fees charged for that portion of the Property, including charges imposed by any lessees, concessionaires, service providers, and/or other assignees shall be at the same rate for County residents as for the residents of the City."

"The City covenants that it shall place the preceding covenants in any deed transferring the Property or a portion of the Property for public park, recreation or open space uses."

1.4 In Conveying the Property by deed, the County shall reserve a Regional Trail Easement within the Property in substantially the form of Exhibit D, attached hereto and made a part of this Agreement by this reference.

1.5 When Conveying the Property by deed, the County shall also record a restrictive covenant against an adjacent parcel of land known as the Wedge Property, which is intended to serve as a trail head for a Regional Trail, in substantially the form of Exhibit E, attached hereto and made a part of this Agreement by this reference.

1.6 In conveying the Property by deed, the County shall reserve the rights set forth as "RESERVATIONS" numbered 1 and 2 immediately following the legal description in Exhibit B.

## **2. Condition of Premises and Responsibility for Operations, Maintenance, Repairs, Improvements, and Recreation Services**

- 2.1 The City has inspected and knows the condition of the Property and agrees to accept the Property in AS IS condition, and to assume full and complete responsibility for all operations, maintenance, repairs, improvements of, and provision of recreational services at, the Property, except for the construction, operation, maintenance, repair and improvement of a regional trail and trail head within the reserved easements referenced in paragraph 1.4 of this Agreement, which construction, operation, maintenance, repair and improvement of the regional trail and trail head shall be the sole responsibility of the County.
- 2.2 King County does not make and specifically disclaims any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose, with respect to the Property, and no official, employee, representative or agent of King County is authorized otherwise, except as to the warranties of title inherent in the conveyance deed.
- 2.3 The City acknowledges and agrees that except as indicated in paragraph 3.2, the County shall have no liability for, and that the City shall release and have no recourse against the County for, any defect or deficiency of any kind whatsoever in the Property without regard to whether such defect or deficiency was known or discoverable by the City or the County.

## **3. Environmental Liability**

- 3.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.
- 3.2 Nothing in this agreement shall be deemed to waive any statutory claim for contribution that the City might have against the County under federal or state environmental statutes that arises from hazardous materials deposited or released on the Property by the County



during the County's period of ownership. The City may not, however, assert such a claim to the extent that the City creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of the City performing construction activities on the Property, changing the configuration of the Property, or changing the use of the Property.

- 3.3 If the City discovers the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against the County it shall immediately notify the County in writing. Such notice shall in no event be provided more than 30 days after discovery. The parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation. The parties acknowledge that if hazardous materials on the Property pose an imminent threat to human health or the environment emergency response may be required before the parties can agree on the responsibility for remediation.
- 3.4 In no event shall the County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

#### **4. Indemnification and Hold Harmless**

- 4.1 King County shall indemnify and hold harmless the City and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, (i) which are caused by or result from a negligent action or omission of King County, its officers, agents and employees in performing its obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Property that occurred prior to the effective date of conveyance of the Property to the City, except to the extent that indemnifying or holding the City harmless would be limited by Section 3 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against the City or the City and King County, King County shall defend the same at its sole cost and expense and, if final judgment be rendered against the City and its elected officials, officers, agents and employees or jointly against the City and King County and their respective elected officials, officers, agents and employees, King County shall satisfy the same.
- 4.2 In executing this Agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, rule or regulation is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County or both, the City shall satisfy the same, including all chargeable costs and attorney's fees.
- 4.3 The City shall indemnify and hold harmless King County and its elected officials,

officers, agents and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, (i) which are caused by or result from a negligent act or omission of the City, its officers, agents and employees in performing obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Property that occurred on or after the effective date of conveyance of the Property to the City, except to the extent that indemnifying or holding the County harmless would be limited by Section 3 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against King County or King County and the City, the City shall defend the same at its sole cost and expense and, if final judgment be rendered against King County and its officers, agents and employees or jointly against King County and the City and their respective officers, agents and employees, the City shall satisfy the same.

- 4.4 Each Party to this Agreement shall immediately notify the other of any and all claims, actions, losses or damages that arise or are brought against that Party relating to or pertaining to the Property.
- 4.5 Each party agrees that its obligations under this paragraph extend to any claim, demand, and/or cause of action brought by or on behalf of any employees, or agents. For this purpose, each party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify the other party.
- 4.6 This Section 4 shall not apply to any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever ("Claims") related to the Trail Corridor as defined in the reserved trail easement in the deed of conveyance, which Claims shall be instead governed by the indemnification and hold harmless provisions of the reserved trail easement.

## **5. View Protection**

- 5.1 After Closing occurs as specified in the Open Space Agreement, any application for a development permit in East Section 2 as defined in the Open Space Agreement may not be approved by the County unless the City has provided written approval of the application indicating that the view protection terms of Section (III)(D) of the Open Space Agreement and the Conservation Easement referenced therein have been complied with by the applicant. The applicant shall be responsible for obtaining such approval and presenting it to the County prior to the County's final approval of such applications.

## **6. Audits and Inspections**

- 6.1 Until December 31, 2011, any of either party's records related to any matters covered by this Intergovernmental Agreement not otherwise privileged shall be subject to inspection, review, and/or audit by either party at the requesting party's sole expense.

Such records shall be made available for inspection during regular business hours within a reasonable time of the request.

**7. Waiver and Amendments**

7.1 Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition shall be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

**8. Entire Agreement and Modifications**

8.1 This Intergovernmental Agreement and its Exhibits sets forth the entire agreement between the parties with respect to the subject matter hereof. It may be supplemented by addenda or amendments, which have been agreed upon by both parties in writing. Copies of such addenda and amendments shall be attached hereto and by this reference made part of this contract as though fully set forth herein.

**9. Duration and Authority**

9.1 This agreement shall be effective upon signature and authorization by both parties. The terms, covenants, representations and warranties contained herein shall not merge in the deed of conveyance, but shall survive the conveyance and shall continue in force unless both parties mutually consent in writing to termination.

**10. Notice**

10.1 Any notice provided for herein shall be sent to the respective parties at:

King County  
Ron Sims

City  
Howard Botts

**11. Exhibits**

11.1 The following Exhibits described herein and attached hereto are fully incorporated into this Agreement by this reference:

Exhibit A	General Description of Property
Exhibit B	Legal Description of Property
Exhibit C	Open Space and Active Recreation Map
Exhibit D	Reserved Regional Trail Easement
Exhibit E	Trail Head Covenant

IN WITNESS WHEREOF, the parties have executed this Agreement.

King County

City of Black Diamond

\_\_\_\_\_  
King County Executive

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
King County  
Deputy Prosecuting Attorney

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

STATE OF WASHINGTON)  
  ) SS  
COUNTY OF KING  )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared, to me known to be the individual described in and who executed the forgoing instrument, and acknowledged to me that \_\_\_\_\_ signed and sealed the said instrument as \_\_\_\_\_ free and voluntary act and deed for the uses and purposed therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the  
State of Washington, residing

at \_\_\_\_\_  
City and State

My appointment expires \_\_\_\_\_

STATE OF WASHINGTON)  
  ) SS  
COUNTY OF KING  )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared, to me known to be the individual described in and who executed the forgoing instrument, and acknowledged to me that \_\_\_\_\_ signed and sealed the said instrument as \_\_\_\_\_ free and voluntary act and deed for the uses and purposed therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the  
State of Washington, residing

at \_\_\_\_\_  
City and State

My appointment expires \_\_\_\_\_

**EXHIBIT A**  
**General Description of Property**

Name of park

Amenities/facilities

Lake Sawyer Park

Undeveloped Land

**EXHIBIT B**  
**Legal Description of Property**

PARCEL B:

That portion of the SW 1/4 of Section 10, Township 21 North, Range 6 East, W.M., described as follows:

Beginning at the West quarter corner of said Section 10 and the True Point of Beginning; thence South 88-49-03 East along the North line of the SW 1/4 of said Section 10 a distance of 1335.74 feet to the NE corner of the NW 1/4 of the SW 1/4 of said Section 10; thence continuing along the North line of said SW 1/4 South 88-47-34 East 267.42 feet to the East line of the West 1603.00 feet of said SW 1/4; thence South 00-23-48 West along the East line thereof 11.52 feet; thence North 88-55-00 West 1443.87 feet to the centerline of Lake Sawyer Road Southeast and a point of non-tangent curve, the center of which bears North 78-40-02 East; thence Northerly on said curve and centerline to the right having a radius of 1926.41 feet, a central angle 04-03-23 and an arc length of 136.38 feet; thence North 07-16-35 West along said centerline 1020.53 feet to the West line of said SW 1/4; thence North 00-23-48 East along said West line 11.52 feet to the West quarter corner of said Section 10 and the True Point of Beginning;

TOGETHER WITH an easement for temporary ingress and egress over a strip of land 30 feet in width, the Northerly line of which is described as follows:

Beginning at a point on the North line of the SW 1/4 of said Section 10, 1603.00 feet East of the West quarter corner of said Section; thence South 00-23-48 West along said East line 334.62 feet to the true point of beginning of said line description; thence South 73-50-05 East 204.79 feet to a point of non-tangent curve, the center of which bears North 17-03-20 East; thence Easterly on said curve to the left having a radius of 278.98 feet, a central angle of 23-47-34 and an arc length of 115.85 feet to a point of reverse curve, the center of which bears South 10-34-09 East; thence Easterly on said curve to the right having a radius of 413.28 feet, a central angle of 13-32-09 and an arc length of 97.63 feet; thence South 86-36-00 East 68.09 feet to a point of non-tangent curve, the center of which bears South 02-27-17 West; thence Southeasterly on said curve to the right having a radius of 283.77 feet, a central angle of 18-11-34 and an arc length of 90.11 feet; thence South 72-19-08 East 236.83 feet; thence South 71-41-12 East 186.97 feet to a point of non-tangent curve, the center of which bears South 17-21-07 West; thence Southeasterly on said curve to the right having a radius of 259.36 feet, a central angle of 26-41-51 and an arc length of 120.85 feet to the terminus of said line.

PARCEL C:

That portion of Section 10, Township 21 North, Range 6 East, W.M., described as follows:

Beginning at the North quarter corner of said Section 10; thence South 89-30-17 East along the North line of said section a distance of 1193.16 feet to the SE corner of "Lot HH" of Boundary Line Adjustment No. L97L0008, as recorded in Book 114 of Surveys, pages 2 through 2D, inclusive, under Recording No. 9703199013, records of King County, Washington and the True Point of Beginning; thence South 01-26-10 West 388.89 feet; thence South 57-49-59 West 244.04 feet to a point of a curve; thence Southwesterly on said curve to the right having a radius of 1700.00 feet, a central angle of 31-49-16 and an arc length of 944.15 feet; thence South 89-39-15 West 93.30 feet to the West line of the NE 1/4 of said section; thence South 0-49-12 West along

said West line 204.75 feet; thence South 20-18-30 West 159.76 feet; thence South 80-25-59 West 42 feet; more or less to the shoreline of Lake Sawyer; thence along said shoreline to the East line of the West 397.00 feet of Government Lot 2 as described in instrument recorded as Recording No. 4892604, records of King County, Washington; thence South 0-44-57 West along said East line 178 feet, more or less, to a point on a line described in an instrument recorded under Recording No. 9902223255, also being an angle point in the east line of Revised Lot "A", King County Boundary Line Adjustment No. S90M0004, approved May 22, 1990; thence South 7-52-01 East along said line 166.87 feet to the North line of the South 30.00 feet of said Government Lot 2; thence North 88-47-34 West along said North line 25.00 feet to the East line of the West 397.00 feet of said Government Lot 2; thence South 0-44-57 West along said line 30.00 feet to the North line of the SW 1/4 of said Section 10; thence North 88-47-34 West along said North line 129.60 feet to the East line of the West 1603.00 feet of the SW 1/4 of said Section 10; thence South 0-23-48 West along said East line 334.62 feet; thence South 73-50-05 East 204.79 feet to a point of non-tangent curve, the center of which bears North 17-03-20 East; thence Easterly on said curve to the left having a radius of 278.98 feet, a central angle of 23-47-34 and an arc length of 115.85 feet to a point of reverse curve, the center of which bears South 10-34-09 East; thence Easterly on said curve to the right having a radius of 413.28 feet, a central angle of 13-32-09 and an arc length of 97.63 feet; thence South 86-36-00 East 68.09 feet to a point of non-tangent curve, the center of which bears South 02-27-17 West; thence Southeasterly on said curve to the right having a radius of 283.77 feet, a central angle of 18-11-34 and an arc length of 90.11 feet; thence South 72-19-08 East 236.83 feet; thence South 71-41-12 East 186.97 feet to a point of non-tangent curve, the center of which bears South 17-21-07 West; thence Southeasterly on said curve to the right having a radius of 259.36 feet, a central angle of 26-41-51 and an arc length of 120.85 feet to a point of compound curve, the center of which bears South 46-12-14 West; thence Southerly on said curve to the right having a radius of 116.90 feet, a central angle of 45-06-12 and an arc length of 92.02 feet; thence South 01-51-39 East 74.54 feet; thence South 15-49-20 East 224.13 feet to a point of non-tangent curve, the center of which bears South 69-36-19 West; thence Southerly on said curve to the right having a radius of 451.94 feet, a central angle of 21-43-57 and an arc length of 171.42 feet; thence South 01-59-30 East 69.10 feet to a point of non-tangent curve, the center of which bears North 79-24-40 East; thence Southerly on said curve to the left having a radius of 1640.30 feet, a central angle of 05-23-39 and an arc length of 154.43 feet; thence South 20-29-49 East 231.36 feet; thence South 89-04-21 East 328.28 feet; thence North 20-30-47 East 155.31 feet; thence North 24-59-36 West 222.08 feet; thence North 22-48-34 East 141.43 feet; thence North 21-33-44 East 344.13 feet; thence North 27-41-39 East 296.49 feet; thence North 16-06-32 East 690.19 feet; thence North 40-29-17 West 760.32 feet; thence North 01-35-06 West 111.89 feet; thence North 08-45-10 West 49.85 feet; thence North 02-41-17 East 376.35 feet to a point of non-tangent curve, the center of which bears North 06-45-47 West; thence Northeasterly on said curve to the left having a radius of 1900.00 feet, a central angle of 35-17-10 and an arc length of 1170.13 feet to a point of compound curve, the center of which bears North 42-02-57 West; thence Northerly on said curve to the left having a radius of 625.00 feet, a central angle of 68-12-39 and an arc length of 744.06 feet; thence North 20-15-36 West 182.85 feet to the North line of said Section 10; thence North 89-30-17 West along said North line 477.42 feet to the True Point of Beginning.

RESERVATIONS:

- 1) All covenants, conditions, restrictions and other matters imposed by instrument.
- RECORDED: November 21, 1938  
RECORDING NO: 3020865



- 2) Rights of King County and the public to the use of Lake Sawyer Road Southeast .

SUBJECT TO:

- 1) All covenants, conditions, restrictions, reservations, easements or other servitudes, if any, disclosed by Survey No. 69/171, recorded under King County Recording No. 8911279001.

Rights or benefits, if any, which may be disclosed by the recorded document(s) above affecting land outside the boundary.

- 2) All covenants, conditions, restrictions, reservations, easements or other servitudes, if any, disclosed by Survey No. 86-180, recorded under King County Recording No. 9204179003.

Rights or benefits, if any, which may be disclosed by the recorded document(s) above affecting land outside the boundary.

- 3) All covenants, conditions, restrictions, reservations, easements or other servitudes, if any, disclosed by Survey No. 103-94, recorded under King County Recording No. 9504209007.

Rights or benefits, if any, which may be disclosed by the recorded document(s) above affecting land outside the boundary.

- 4) All covenants, conditions, restrictions, reservations, easements or other servitudes, if any, disclosed by Survey No. 103-95, recorded under King County Recording No. 9504209008.

Rights or benefits, if any, which may be disclosed by the recorded document(s) above affecting land outside the boundary.

- 5) Easement and terms and conditions thereof:  
GRANTEE: Puget Sound Power & Light Company, a Washington corporation  
PURPOSE: Electric distribution system  
AREA AFFECTED: A portion of said premises  
RECORDED: August 24, 1995  
RECORDING NO: 9508241496

- 6) All covenants, conditions, restrictions, reservations, easements or other servitudes, if any, disclosed by Survey No. 106-238, recorded under King County Recording No. 9512119006.

Rights or benefits, if any, which may be disclosed by the recorded document(s) above affecting land outside the boundary.

- 7) All covenants, conditions, restrictions, reservations, easements or other servitudes, if any, disclosed by Survey No. 103-96, recorded under King County Recording No. 9504209009.

Rights or benefits, if any, which may be disclosed by the recorded document(s) above affecting land outside the boundary.

- 8) Notice of tap or connection charges which have been or will be due in connection with development or re-development of the land as disclosed by recorded instrument. Inquiries regarding the specific amount of the charges should be made to the City/County/Agency.  
 CITY/COUNTY/AGENCY: Soos Creek Water and Sewer District  
 RECORDED: July 11, 1997  
 RECORDING NO: 9707110496
- 9) Covenants, conditions, restrictions, easements, dedications, notes and recitals, and the terms and conditions thereof, contained on Survey:  
 RECORDED: February 25, 1998  
 RECORDING NO: 9802259007
- 10) Covenants, conditions, restrictions, easements, dedications, notes and recitals, and the terms and conditions thereof, contained on Lot Line Adjustment:  
 RECORDED: April 26, 1999  
 RECORDING NO: 9904269011  
 AFFECTS: Parcel A and other lands
- 11) Easement and the terms and conditions thereof:  
 GRANTEE: City of Tacoma  
 PURPOSE: Water transmission pipeline or pipelines  
 AREA AFFECTED: A portion of Parcel B and other lands  
 RECORDED: March 6, 1975 and February 28, 1977  
 RECORDING NOS: 7503060275 and 7702280520
- 12) All covenants, conditions, restrictions, reservations, clauses and other matters imposed by Statutory Warranty Deed:  
 RECORDED: June 25, 1999  
 RECORDING NO: 19990625001627
- 13) All covenants, conditions, restrictions, reservations, clauses and other matters imposed by Statutory Warranty Deed:  
 RECORDED: October 14, 1999  
 RECORDING NO: 19991014001161
- 14) Right of the State of Washington in and to that portion, if any, of the land herein described which lies below the line of ordinary high water of the Lake Sawyer.
- 15) Rights and easements of the public for commerce, navigation, recreation and fisheries.
- 16) Any restriction on the use of the land resulting from the rights of the public or riparian owners to use any portion which is now, or has formerly been, covered by water.
- 17) Location of the lateral boundaries of second class tidelands and shorelands.
- 18) Covenants, conditions, restrictions, easements, dedications, notes and recitals, and the

terms and conditions thereof, contained on Survey:

RECORDED: January 20, 2000

RECORDING NO: 20000120900002

- 19) All covenants, conditions, restrictions, reservations, clauses and other matters imposed by Deed or Right to Use Land for Public Recreation Purposes:  
RECORDED: September 21, 1999  
RECORDING NUMBER: 19990921000418
- 20) All covenants, conditions, restrictions, reservations, clauses and other matters imposed by Deed or Right to Use Land for Public Recreation Purposes:  
RECORDED: July 6, 2000  
RECORDING NUMBER: 20000706000512
- 21) All covenants, conditions, restrictions, reservations, clauses and other matters imposed by Deed or Right to Use Land for Public Recreation Purposes:  
RECORDED: January 8, 2001  
RECORDING NUMBER: 20010108000197
- 22) All covenants, conditions, restrictions, reservations, clauses and other matters imposed by Deed or Right to Use Land for Public Recreation Purposes:  
RECORDED: February 8, 2001  
RECORDING NUMBER: 20010208000198
- 23) All covenants, conditions, restrictions, reservations, clauses and other matters imposed by Memorandum of Oil and Gas Lease:  
RECORDED: February 4, 2000  
RECORDING NUMBER: 20000204000902  
Assignment:  
RECORDED: March 15, 2000  
RECORDING NUMBER: 20000315000621  
Amendment:  
RECORDED: February 5, 2001  
RECORDING NUMBER: 20010205002622

**EXHIBIT C**  
**Open Space and Active Recreation Map**

**EXHIBIT D**  
**Reserved Regional Trail Easement**

A. King County reserves to itself, its successors and assigns, a permanent perpetual nonexclusive easement ("Easement") for a public, multi-purpose hard and/or soft-surface regional trail ("Trail") for public pedestrian, equestrian, bicycle and other non-motorized uses, over, through, along, and across certain parcels of land situated in King County. The Easement shall ultimately be a strip of land generally 30 feet in width, centered on an alignment to be determined by the parties pursuant to the terms of this Easement. The area subject to the Easement shall be referred to herein as the "Trail Corridor."

B. The Trail Corridor shall enter the Property in the vicinity of SE 312<sup>th</sup> and Lake Sawyer Road SE and shall exit the Property at the far northern boundary of the Property to connect with the trail easement to the north. The approximate entry and exit points are shown in Exhibit 1, attached to and made a part of this Deed. Aside from these entry and exit points, the County and Grantee shall consult with one another in good faith to reach agreement on the precise location of the Trail Corridor within the Property. The County and Grantee will seek to agree to a location for the Trail Corridor that best serves the public interest in an integrated recreational facility that combines a regional trail, active recreation facilities, and passive recreation.

C. The Trail Corridor shall allow for vehicular crossing(s), if needed, in order to accommodate the City's park development plans, so long as safety issues relating to the crossing(s) are adequately addressed. Should Grantee proceed to construction of a vehicle access prior to the County constructing the Trail, Grantee shall coordinate with the County to ensure that the design and construction of the access is compatible with the Trail and Trail crossing.

D. Selection of the location of the Trail Corridor shall occur as follows:

1. In order to avoid having any area that is suitable for the Trail Corridor being eliminated from consideration, the County and Grantee shall reach agreement on the location of the Trail Corridor prior to the installation of any permanent improvements on the Property unless the County and Grantee agree in writing to the installation of such improvements. Such improvements will be appropriate if the improvements are to be located in an area that would not be considered for the Trail Corridor. If either Party commenced its planning process for its respective facilities in the Park, the other Party will participate in good faith to attempt to avoid delaying that planning process.

2. If the parties agree to the location of the Trail Corridor at a general planning level of detail or at any other stage of planning prior to preparation of plans at a schematic design level of detail, the Trail Corridor will initially be 100 feet in width, and shall remain 100 feet in width until construction of the Trail is completed. The 100 foot width will allow the County to prepare schematic designs that account for the specific physical characteristics of the land within the Trail Corridor, and to construct the trail. After construction is completed, the Trail Corridor will be generally 30 feet in width, but shall be wider in areas where additional width is needed to accommodate all necessary slopes for cuts and fills for the trail, or to install drainage or detention facilities or other facilities required by a permitting agency that support or provide mitigation for the trail that cannot reasonably be located within the 30 foot width.

3. If the parties agree to the location of the Trail Corridor at a schematic design level of detail, the Trail Corridor will be generally 30 feet in width, but shall be wider in areas where additional width is needed to make all necessary slopes for cuts and fills for the Trail, or to

install drainage or detention facilities or other facilities required by the permitting agency that support or provide mitigation for the regional trail that cannot reasonably be located within the 30 foot width.

4. Whenever the parties reach agreement on the location of the Trail Corridor this Easement shall be amended to add a legal description defining the location of the Trail Corridor. Such amendment may occur more than once if the parties agree to an initial 100 foot wide Trail Corridor that is subsequently narrowed to a generally 30 foot wide Trail Corridor.

E. The County and Grantee shall consult with one another during the design of any drainage or detention facilities for each entity's respective improvements in the Park to explore whether such facilities could be shared.

F. This Easement includes the right of access for ingress and egress across the Property to the Trail Corridor, the right to make all uses of the Trail Corridor for improvement, construction, alteration, repair, maintenance, trail-related utilities and operation of a Trail, the right to make all necessary slopes for cuts and fills for a Trail, and the right to use motorized vehicles for the improvement, construction, alteration, repair, maintenance and operation of a Trail and for emergency or law enforcement purposes.

G. This Easement includes the temporary right during repair of the Trail to stage repair activities in and around the Trail Corridor as necessary to repair the Trail. Except in emergency situation, such use shall not commence until the County has prepared a restoration plan for the affected land, the surface of which shall be restored as nearly as possible to the condition in which it existed prior to the repair work. If repair work is performed in an emergency situation,

the County shall prepare and implement a restoration plan so that the surface of the affected land is restored as nearly as possible to the condition in which it existed prior to the repair work.

H. If the parties agree to the location of the Trail Corridor at a schematic design level of detail pursuant to Section C.3., this Easement shall further include the temporary right during construction to stage construction activities in and around the Trail Corridor as necessary to construct the Trail. Such use shall not commence until the County has prepared a restoration plan for the affected land, the surface of which shall be restored as nearly as possible to the condition in which it existed prior to construction.

I. The County shall be responsible for the cost of all Trail and related facilities design, construction, operation, maintenance, repair and replacement. The County shall maintain any constructed trail within the Trail Corridor consistent with County standards, policies and practices for improved regional trails and consistent with adopted budget appropriations.

J. All right, title, and interest that may be used and enjoyed without interfering with the easement rights herein reserved are transferred to the City. The construction, installation or maintenance of unapproved structures or improvements, whether temporary or permanent, shall be absolutely prohibited within the Trail Corridor and shall be deemed an interference with the County's rights unless specifically approved in writing by the County, which approval shall not be unreasonably withheld. Considerations governing approval shall include whether the proposed structure or improvement would interfere with the County's use of the Trail Corridor for trail purposes or would pose any health or safety risks.



K. To the extent permitted by law, each party shall protect, defend, indemnify and save harmless the other party, its officials, employees and agents, from any and all costs, expenses, claims, actions, suits, liability, loss, judgments, attorney's fees and/or awards of damages arising out of or in any way resulting from the indemnifying party's, or its officials', employees' or agents' negligent acts, errors or omissions related to the Trail Corridor. If such costs, expenses, claims, actions, suits, liability, loss, judgments, attorney's fees and/or awards of damages are caused by, or result from, the concurrent negligence of the parties, or their officials, employees and agents, this Section shall be valid and enforceable only to the extent of the negligence of each party, its officials, employees and agents.

The foregoing indemnity is specifically and expressly intended to constitute a waiver of indemnifying party's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the indemnified party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. The parties acknowledge that these provisions were specifically negotiated and agreed by them.

L. Any facilities installed by the County under the authority of this Easement shall be consistent with the restrictive covenants reserved by the County in this Deed.

M. The County shall comply with all applicable development standards, including those relating to stormwater, wetland setbacks and buffers, and other critical areas, and obtain such

permits as are necessary to construct the Trail and the Trail improvements located within the City.

N. The easement and agreements contained herein shall be deemed covenants running with the land (subject to the terms hereof) and shall inure to the benefit of and be binding upon County's and City's respective successors and assigns. The exhibits attached hereto are incorporated herein by this reference as if fully set forth.

**EXHIBIT E**  
**Trail Head Covenant**

*When Recorded Return to:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**DECLARATION OF TRAIL HEAD BUFFER COVENANT**

THIS DECLARATION OF TRAIL HEAD BUFFER COVENANT (“Covenant”) is dated for reference purposes as of \_\_\_\_\_ and is made by King County, a political subdivision of the State of Washington (the “County”) in favor of the City of Black Diamond, a Washington municipal corporation (the “City”).

**RECITALS**

- A. The County is the owner of certain real property located in King County, Washington, as more particularly described on the attached Exhibit A (“Subject Property”).
- B. The County intends to develop the Subject Property as a public trail head, trail head parking area, and trail connection associated with a public, multipurpose hard and/or soft-surface regional trail for pedestrian, equestrian, bicycle and other non-motorized uses.
- C. The City would like any development of the Subject Property to include a visual buffer of filtered views from portions of Lake Sawyer Road Southeast into the Subject Property, and as a result of this Covenant the Subject Property will qualify as “In-City Open Space” under the Black Diamond Urban Growth Area Agreement dated December 31, 1996.

**DECLARATION**

1. **Trail Head Buffer Covenant.** The County hereby covenants that when it develops the Subject Property it will incorporate a landscape buffer that is a minimum of twenty feet wide in the area of the Subject Property depicted in Exhibit B as the “Buffer Area.” The County will incorporate a buffer in the Buffer Area into the design and development of the Subject Property that provides filtered views of any developed interior portion of the Subject Property from Lake Sawyer Road Southeast, provided, the County may within the Buffer Area build access roads that enter or exit the Subject Property from or to Lake Sawyer Road Southeast, clear areas adjacent to such access roads in order to maintain appropriate sight lines

for motorized vehicles, and satisfy any regulatory requirements. The buffer requirements may be met through the retention of existing vegetation on the Subject Property or adjacent properties or by adding new plantings, or both. The County may further, with the City's consent, which shall not be unreasonably withheld, modify the buffer requirements in order to address site-specific conditions identified through the design or development of the Subject Property in order to meet the operational goals of the intended development, or to avoid impairing visual security from Lake Sawyer Road Southeast for trail head, parking, or trail users.

2. **Amendment.** This Covenant may only be amended in writing (i) executed by the County, (ii) approved in writing by the City, and (iii) recorded in the real property records of King County.

3. **Covenant Running with the Land.** This Covenant shall be deemed a covenant running with the land and shall inure to the benefit of and shall be binding upon, all persons having any right, title or interest in such land and their respective successors, grantees and assigns.

4. **Subject to Prior Encumbrances.** This Covenant is granted subject to all prior encumbrances of record on the Subject Property.

EXECUTED as of the day and year first written above.

KING COUNTY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

On this day personally appeared before me \_\_\_\_\_, to me known to be the \_\_\_\_\_ of KING COUNTY, a municipal subdivision of the State of Washington, that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Printed Name  
NOTARY PUBLIC in and for the State of Washington,  
residing at \_\_\_\_\_  
My commission Expires \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION OF SUBJECT PROPERTY**

That portion of the Southwest quarter of Section 10, Township 21 North, Range 6 East, W.M., in King County, Washington, lying Southwesterly of the centerline of Lake Sawyer Road Southeast (also known as 228<sup>th</sup> Avenue Southeast).

INTERLOCAL COOPERATION AGREEMENT BETWEEN KING COUNTY  
AND THE CITY OF BLACK DIAMOND FOR  
OPEN SPACE ACQUISITION PROJECTS

THIS INTERLOCAL COOPERATION AGREEMENT is entered into between  
the CITY OF BLACK DIAMOND (“City”) and KING COUNTY (“County”).

Article I. Recitals

The County desires to contribute funding in the amount of \$492,401 to the Ginder Creek Open Space Acquisition project from the Conservation Futures Fund, which consists of conservation future tax levy funds collected through the tax levy upon all taxable property in King County authorized by RCW 84.34.230. This contribution is in addition to the \$607,599 that was appropriated from the Jones Lake project, for a total contribution of \$1.1 million to the Ginder Creek Open Space Acquisition project. The King County Council, by Ordinance \_\_\_\_\_, has authorized the King County Executive to enter into this interlocal cooperation agreement with the City in order to carry out the Ginder Creek Open Space Acquisition project.

In addition, the Open Space Citizen Advisory Committee, which makes recommendations on the allocation of a portion of the Conservation Futures Fund, has recommended an allocation of \$50,000 to the Black Diamond In-City Forest Land Acquisition project following notification to the suburban cities that funds were available, provision of an opportunity for the suburban cities to respond and receipt by the committee of requests for funding, all pursuant to K.C.C. ch. 26.12. King County’s Conservation

Futures Fund contribution to this acquisition will be matched by money obtained by the City from Plum Creek. The King County Council, by ordinance 15083, has approved the recommendation for the allocation of Conservation Future Levy funds to the Black Diamond In-City Forest Land Acquisition project, and by Ordinance \_\_\_\_\_, has authorized the King County Executive to enter into this interlocal cooperation agreements with City in order to carry out this project.

In addition, the County desires to contribute additional funding of \$70,000 from the Conservation Futures Levy Fund to the Black Diamond In-City Forest Land Acquisition project. The King County Council, by ordinance \_\_\_\_\_, has authorized the King County Executive to enter into this interlocal cooperation agreement with City in order to make this contribution.

Pursuant to Washington Statute Chapter 39.34, the parties agree to follows:

Article II. Definitions

The following definition shall apply to this Agreement.

2.1 Open Space

The term "open space" or "open space land" means: (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly; or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply; or (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or (iv) enhance the



value to the public of abutting or neighboring parks, forests, wildlife reserves, natural reservations or sanctuaries or other open space, or (v) enhance recreational activities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state tracts of land of not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification, or (c) any land meeting the definition of farms and agricultural conservation under subsection (8) of RCW 84.34.020. As a condition of granting open space classification, the legislative body may not require public access on land classified under (b) (iii) of this subsection for the purpose of promoting conservation of wetlands.

## 2.2 Projects

The term "Projects" means the Ginder Creek Open Space Acquisition project for the approximately twenty-seven acres of land described in Exhibit A to this Agreement and incorporated herein by this reference, to be funded from the Conservation Futures Fund, and the Black Diamond In-City Forest Land project described in Exhibit A to be funded from the Conservation Futures Fund.

## 2.3 Conservation Futures

The term "Conservation Futures" means developmental rights which may be acquired by purchase, gift, grant, bequest, devise, lease or otherwise, except by eminent domain, and may consist of fee simple or any lesser interest, development right, easement,

covenant, or other contractual right necessary to protect, preserve, maintain, improve restore, limit future use of, or otherwise conserve open space land, all in accordance with the provisions of Washington Statute Chapter 84.34 RCW.

Article III. Purpose of the Agreement

The purpose of this agreement is to create a cooperative arrangement between the City and the County relating to the Projects and to define the terms and conditions governing both parties' obligations created by this agreement.

Article IV. Term of Agreement

This agreement shall be continued in full force and effect and binding upon the parties hereto upon execution of the agreement by both parties. The terms of the agreement shall be indefinite. The agreement will be terminated if the City is unable or unwilling: 1) to expend the funds provided through this agreement; 2) to satisfy the matching requirements for the Black Diamond In-City Forest Land Acquisition project contained in this agreement; and 3) upon reimbursement by the City to the County of all unexpended funds provided by the County pursuant to this agreement in the manner and amounts described below.

Article V. Conditions of Agreement

Section 5.1 -- Project Descriptions. Funds available pursuant to this agreement may be used only for Projects listed in Exhibit A, which is incorporated herein by reference, or such substituted Projects as may be approved by the County as set forth below. All County funded Projects must meet open space criteria as described in K.C.C. ch. 26.12 and RCW 84.34.020.

Section 5.2 -- Use of Funds. Funds provided to the City pursuant to this agreement as well as funds provided by the City as match pursuant to this agreement may be used only for expenses related to property acquisition. Those expenses include appraisals, title searches, negotiations, administrative overhead, and the cost of actual acquisition or purchase options. Funds utilized pursuant to this agreement may not be used to purchase land obtained through the exercise of eminent domain.

Section 5.3 -- Substitution/Deletion of Projects. If the City does not proceed with the Projects described in Section 6.1 of this agreement, the City may reimburse the County all funds provided in good faith to acquire the property for open space, plus accrued interest earnings on the unexpended balance. Alternatively, the City may submit specific requests for project reprogramming to the County for its approval. All projects proposed for reprogramming must meet open space criteria as described in K.C.C. ch. 26.12 and RCW 84.34.020. A proposal to reprogram Conservation Futures Fund money from the Ginder Creek Open Space Acquisition project must be approved by the King County Council. A proposal to reprogram Conservation Futures Fund money from the Black Diamond In-City

Open Space project must be submitted for recommendation by the County's Citizens Oversight Committee or its successor and be approved by action of the King County Council. All reprogramming requests shall be submitted to the County's Department of Natural Resources, Capital Projects and Open Space Acquisition Section, or its successor.

Section 5.4 -- Eminent Domain. If any Project requires the exercise of eminent domain to acquire the property, all funds provided pursuant to this agreement plus accrued interest on such funds shall be reprogrammed as provided in this agreement or repaid to the County.

Article VI. Responsibilities of the City

Section 6.1 -- Matching Requirements. The Black Diamond In-City Open Space Acquisition project funded by Conservation Futures Levy proceeds shall be supported by the City with a matching contribution which is no less than the amount of Conservation Futures Levy funds allocated to the Project. This contribution may be in the form of cash from the City or from another entity as arranged by the City, land trades with a valuation verified by an appraisal conducted by a MIA certified appraiser, or credits for other qualifying open space acquired on or after January 1, 1989. Any City match, other than cash, shall require County approval. County approval and County acceptance of the City's match will be transmitted in writing to the City by the County's Manager of the Capital Projects and Open Space Acquisition Section or their successor in functions.

Such matching contribution must be made at the closing of the acquisition of the Black Diamond In-City Forest Land. If such contribution is not made, the County shall be released from any obligation to fund the Project in question, and the City shall reimburse the County all funds provided to the City pursuant to this agreement plus accrued interest on such funds. All such moneys will be available to the County to reallocate to other approved Projects. By appropriate legislature action taken not more than 60 days following the effective date of this agreement, the City shall commit to contribute its required match.

Section 6.2 -- Project Description. As part of the application to receive Conservation Futures Levy funds from the County, the City shall submit the following information concerning each project: 1) a narrative description of the project; 2) a description of the specific uses for Conservation Futures Levy funds in the Project; and 3) a description of the means by which the City will satisfy the matching requirements contained in this agreement.

Section 6.3 -- Reporting. All funds received pursuant to this agreement and accrued interest therefrom will be accounted for separately from all other City funds, accounts and moneys. Until the property described in the Project is acquired and all funds provided pursuant to this agreement expended, the City shall provide semi-annual written reports to the County within 30 days of the end of each relevant time period. The semi-annual report shall contain the following information: a) an accounting of all cash expenditures and encumbrances for support of the Project; b) the status of each Project and any changes to the

approved time line; and c) other relevant information requested by the County for the purpose of determining compliance with this agreement.

Following acquisition of the property and expenditure of all funds provided pursuant to this agreement, the City shall provide the County with a final report, within 90 days of the end of the calendar year in which all funds were expended. Said report shall contain a summary of all project expenditures, a description of the project status and accomplishments and other relevant information requested by the County for the purpose of verifying compliance with this agreement.

The City shall also provide the County, within 90 days of the end of each calendar year, annual reports which specify any change in the status of the Project during the prior year and any change in the status of the Project which the City reasonably anticipates during the ensuing year. Such reports shall be required only if a change has taken place or is anticipated, except as provided above for ongoing and final project reports. All such reports shall be submitted to the County's Department of Natural Resources, Capital Projects and Open Space Acquisition Section, or its successor.

#### Section 6.4 -- Disposition of Remaining Funds.

If the City does not expend all funds provided through this agreement and no substitute project is requested or approved as to the excess funds as authorized by Section 5.3, such funds shall be refunded to the County. For purposes of this section, "funds" shall include all moneys provided by the county plus interest accrued by the City on such moneys.

Section 6.5 -- Maintenance in Perpetuity. The City, and any successor in interest, agree to maintain properties acquired with funds provided pursuant to this agreement as open space in perpetuity. If the City changes the status or use of properties acquired with funds provided pursuant to this agreement to any purpose, the City shall pay the County an amount in cash to be mutually determined or substitute other property acceptable to the County. In either case, the value of the property shall be established at the time of the change in status or use, based upon the changed status or use and not based on its value as open space.

Upon changes in status and/or use of the property acquired herein, at its own cost, the City will provide the County an independent MIA appraisal in accordance with this section. The value established by the appraisal will not be binding on the County. The City shall provide the County with written notice prior to the change of use and shall reimburse the County within 90 days of such notification. Reimbursement not received within 90 days will accrue interest at the then legal rate.

#### Article VII. Responsibilities of the County

Section 7.1 – Conservation Futures Levy Funds. Subject to the terms of this agreement, the County will provide Conservation Futures Levy funds for the Projects in the amount shown in Exhibit A. The City may request additional funds; however, the County has no obligation to provide Conservation Futures funds to the City in excess of the amount

shown in Exhibit A. The County assumes no obligation for future support of the Projects described herein except as expressly set forth in this agreement.

Section 7.2 – Ginder Creek Open Space. The County will also provide \$607,599 in additional funds for acquiring the Ginder Creek Open Space project that are not being acquired with Conservation Futures funds, for a total County contribution of \$1.1 million to the project. This additional \$607,599 is not from the Conservation Futures Levy Fund.

Article VIII Other Provisions

Section 8.1 -- Hold Harmless and Indemnification.

A. The County assumes no responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of the City, its employees, contractors or others by reason of this agreement. The City shall protect, indemnify and save harmless the County, its officers, agents and employees from any and all claims, cost and whatsoever occurring or resulting from: 1) the City's failure to pay any compensation, fees, wages, benefits or taxes; and 2) the supplying to the City of works services, materials or supplies by City employees or agents or other contractors or suppliers in connection with or in support of performance of this agreement.

B. The City further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception, which occurs due to the



negligent or intentional acts or failure for any reason to comply with the terms of this agreement by the City, its officer, employees, agent or representatives.

C. The City shall protect, indemnify and save harmless the County from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the City, its officers, employees or agents. For purpose of this agreement only, the City agrees to waive the immunity granted it for industrial insurance claims pursuant to Washington Statute Chapter 51 to the extent necessary to extend its obligations under this paragraph to any claim, demand, or cause of action brought by or on behalf of any employee, including judgments, awards and costs arising therefrom including attorney's fees.

Section 8.2 -- Amendment. The parties reserve the right to amend or modify this agreement. Such amendments or modifications must be by written instrument signed by the parties and approved by the respective City and County Councils.

Section 8.3 -- Contract Waiver. No waiver by either party of any term or condition of this agreement shall be deemed or construed to be a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provision of this agreement. No waiver shall be effective unless made in writing.

Section 8.4 -- Entirety. This agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated are excluded. This

agreement merges and supersedes all prior negotiations, representations and agreements between the parties relating to the projects and constitutes the entire agreement between the parties. The parties recognize that time is of the essence in the performance of the provisions of this agreement.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the spaces put forth below:

KING COUNTY

CITY OF BLACK DIAMOND

\_\_\_\_\_  
Ron Sims  
King County Executive

\_\_\_\_\_  
Howard Botts  
Mayor

Date: \_\_\_\_\_  
Acting under the authority of  
Ordinance \_\_\_\_\_

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

Approved as to form:

Attested by:

\_\_\_\_\_  
NORM MALENG  
King County Prosecuting Attorney

\_\_\_\_\_  
Cris Kandor  
City Clerk

Approved as to form:

\_\_\_\_\_  
Loren Combs  
Black Diamond City Attorney

**EXHIBIT A**

**CITY OF BLACK DIAMOND  
CONSERVATION FUTURES ALLOCATIONS & PROJECT DESCRIPTION**

<u>PROJECT NAME</u>	<u>AMOUNT</u>
Ginder Creek Open Space	\$492,401
Black Diamond In-City Forest Land	\$120,000

PROJECT DESCRIPTION:

**Ginder Creek Open Space:** Acquisition of critical habitat within the city limits for Black Diamond. The property will provide much needed open space and protection within the city and provide additional linkages to other important open space and trails within Black Diamond.

**Black Diamond In-City Forest Land.** This project consists of the acquisition of timber harvest rights on a 50-acre property identified in the Black Diamond Urban Growth Agreement as "In-city forest land." The property is located near Lawson Road, east of State Route 169 on the eastern boundary of the city. The parcel is part of an open space link between the Black Diamond city center and the Green River Gorge. It contains an old rail bed that, if acquired in the future, could be used as a trail that links the city with the Green River Gorge. The Citizens Advisory Committee recommends that the city negotiate with the landowner to gain trail rights-of-way through the property to meet its stated goal of providing trail access from the City to the Green River Gorge area. Such trail access was discussed, but was not actually proposed for purchase in the application.

**INTERLOCAL AGREEMENT BETWEEN  
KING COUNTY AND THE CITY OF BLACK DIAMOND  
REGARDING THE PROVISION OF INFRASTRUCTURE**

This Agreement is hereby entered into by King County, a home rule charter County in the State of Washington (hereinafter referred to as the "County"), and the City of Black Diamond, a municipal corporation of the State of Washington (hereinafter referred to as the "City") and shall be effective upon approval by King County and the City of Black Diamond.

WHEREAS, the County and the City entered into the Black Diamond Urban Growth Area Agreement dated December 31, 1996 (the "BDUGGA").

WHEREAS, Section 5.2 of the BDUGGA calls for the County and the City to execute an interlocal agreement prior to annexation of the West Annexation Area identified in the BDUGGA concerning the provision of certain sewer service and needed road improvements.

WHEREAS, this interlocal is entered into between the County and the City in satisfaction of the requirements of Section 5.2 of the BDUGGA.

WHEREAS, the parties are each authorized to enter into this Agreement pursuant to RCW 39.34 (the Interlocal Cooperation Act) and Article 11 of the Washington State Constitution;

NOW, THEREFORE, it is agreed by the parties as follows:

1. Purpose of the Agreement.

The purpose of this Agreement is to satisfy the requirement of Section 5.2 of the BDUGGA for entering into an interlocal agreement prior to annexation of the West Annexation Area for the provision of certain sewer service and needed road improvements.

2. Sewer Service.

Pursuant to Section 5.2(a)(3) of the BDUGAA, the City and the County agree that sewer service above the current population equivalent of 3600 is being provided through the current plans for sewage disposal service and a commitment by the City to adopt a moratorium in certain circumstances, as follows:

a. King County (as successor to the Municipality of Metropolitan Seattle) and the City of Black Diamond are parties to a long-term agreement for sewage disposal dated September 12, 1990. By the terms of that agreement, King County is obligated to accept all sewage delivered by the city to King County's metropolitan sewage facilities. The city is also obligated to deliver all sewage it collects to King County's facilities.

b. To facilitate the delivery and acceptance of the city's sewage into the county system as contemplated by the 1990 agreement, the county assumed the sole responsibility to operate, maintain and repair a pumping station in the city along with a force main and gravity

sewer (all constructed by the city) that currently connect to the facilities of Soos Creek Water and Sewer District. The district, in turn, delivers all sewage it collects to the King County system.

c. To identify future facilities that will be needed to convey sewage throughout the metropolitan system, King County began a Conveyance System Improvement (CSI) Program in 1998 that has proceeded in accordance with the Regional Wastewater Service Plan adopted by the King County Council November 30, 1999. The planning documents for the portion of the CSI Program that identifies facilities to convey sewage from the Black Diamond and Soos Creek areas to county wastewater treatment facilities were completed in May, 2002. (The documents are specifically entitled CSI Project, Mill Creek/Green River Subregional Planning Area-Task 250 Supplement Report Working Alternative 3A, Soos Planning Zone.) King County and Soos Creek then entered into an agreement May 20, 2002 that clarifies responsibilities for development and operation of these facilities ("2002 Agreement").

d. With the county operated system in the city approaching its capacity the county is proceeding with development of parallel facilities, as identified in the CSI Project and the 2002 Agreement as the Pumping Station H and Pipeline Project (included as one of several projects in CIP No. A20420-423373), to provide sewage conveyance capacity to meet projected needs in the city's service area. Procurement of consultant services for predesign and design of those facilities is scheduled for the second half of 2005.

e. To address projected wastewater conveyance needs from the larger Black Diamond/Soos Creek areas the county is also proceeding with development of additional facilities that will obviate the need for Black Diamond sewage to be routed through the Soos Creek system. These facilities include the Soos Creek Pumping Station D and Pipeline Project (CIP No. A20420-423583) also identified in the CSI Project and the 2002 Agreement. To undertake predesign and design of these facilities, the county entered into an agreement for consultant service August 20, 2003.

f. All of the facilities mentioned above are currently intended to be in operation by early 2010. The schedule reflects the time it is expected to take for design, SEPA, permitting, land acquisition, and construction.

g. The capacity sought to be achieved by the facilities mentioned above might also be accomplished through alternative arrangements and facility configurations, such as through, without limitation, contractual arrangements between the County and the Soos Creek Water and Sewer District, and/or the City for additional wastewater conveyance.

h. If the facilities planned for as outlined above are not completed and in operation at a time when there are vested development permit applications filed with the City that would when built require the provision of sewer service at or above the current population equivalent of 3600, the City shall enact a moratorium on the acceptance of new development permit applications which shall stay in force until such time as the facilities mentioned above are completed and in operation or until other arrangements are made to allow for the provision of sewer service above the current population equivalent of 3600. No moratorium will be required,

however, if at the time there are vested development applications filed with the City that would when built require the provision of sewer service at or above the current population equivalent of 3600, there are already in place arrangements that allow the provision of sewer service above the current population equivalent of 3600.

3. Road Service.

Pursuant to Section 5.2(a)(5) of the BDUGAA, the City and the County agree that there are no needed road improvements for the West Annexation Area that have been identified by the City or the County at this time. It is anticipated that any such road improvements identified in the future will be funded by the owners and developers of property in the West Annexation Area. The City and County will cooperate with one another concerning the manner in which any such needed improvements are addressed, provided, this agreement to cooperate does not obligate either entity to pay for such improvements. As part of this cooperation the City and the County will discuss entering into reciprocal agreements for the collection of transportation impact fees and transportation concurrency review.

4. Legal Relations.

4.1 It is understood and agreed that this Agreement 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 Agreement. No employees or agents of one party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees of the other party.

4.2 This Agreement shall be interpreted in accordance with the laws of the State of Washington. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

4.3 To the maximum extent permitted by law, each party shall defend, indemnify and hold harmless the other party, and all of its officials, employees, principals and agents, from any and all claims, demands, suits, actions, fines, penalties, and liability of any kind, including injuries to persons or damages to property, which arise out of or are related to any negligent acts, errors, omissions of the indemnifying party and its contractors, agents, employees and representatives in performing obligations under this Agreement. Provided, that if any such damages and injuries to persons or property are caused by or result from the concurrent negligence of the City or its contractors, employees, agents, or representatives, and the County or its contractor or employees, agents, or representatives, each party's obligation hereunder applies only to the extent of the negligence of such party or its contractor or employees, agents, or representatives.

The foregoing indemnity is specifically and expressly intended to constitute a waiver of each party's immunity under industrial insurance, Title 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. This waiver has been mutually negotiated.

4.4 In the event either party incurs attorney fees, costs or other legal expenses to enforce the provisions of this section against the other party, all such fees, costs and expenses shall be

recoverable by the prevailing party.

4.5 The provisions of this section shall survive any termination of this Agreement.

5.0 Duration and Termination.

5.1 This Agreement shall take effect upon its signing by both parties and shall remain in effect for a term that is the later of twenty years from the date of execution, the date that the sewer facilities contemplated by Section 2 of this Agreement are completed, or the date that the needed road improvements for development of the West Annexation Area contemplated by Section 3 of this Agreement are completed.

5.2 Either party may terminate this Agreement in the event the other fails to perform its obligations as described in this Agreement, and such failure has not been corrected to the reasonable satisfaction of the other in a timely manner after notice of breach has been provided to such other party. Written notice of such termination shall be given by the party terminating this Agreement to the other party not less than fourteen (14) days prior to the effective date of termination.

5.3 Failure to require full and timely performance of any provision at any time shall not waive or reduce the right to insist upon complete and timely performance of such provision thereafter.

6.0 Administration and Identification of Contacts.

6.1 This Agreement shall be administered by the Director, Wastewater Division, Department of Natural Resources and Parks of the County and the City Administrator of the City, which shall be contacted as follows:

County:  
Director, Wastewater Treatment Division  
Department of Natural Resources and Parks  
201 S. Jackson Street  
Seattle, WA 98104

City:  
City of Black Diamond  
Attn: City Administrator  
P.O. Box 599  
Black Diamond, WA 98010

7.0 Entire Agreement.

This Agreement is a complete expression of the terms hereto and any oral representation or understandings not incorporated herein are excluded. Any modification, amendment, or



clarification to this Agreement shall be in writing and signed by both parties. Copies of such shall be attached hereto and by this reference made a part of this Agreement as though fully set forth herein.

8.0 Third Party Beneficiaries.

This agreement is made and entered into for the sole protection and benefit of the parties hereto. No other person or entity shall have any right of action or interest in this Agreement based on any provision set forth herein.

9.0 Severability.

If any provisions of this Agreement are held invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives originally contemplated.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

KING COUNTY

\_\_\_\_\_  
Ron Sims  
King County Executive

\_\_\_\_\_  
Dated

Approved as to Form:

Norm Maleng  
King County Prosecuting Attorney

By: \_\_\_\_\_  
Senior Deputy Prosecuting Attorney

\_\_\_\_\_  
Dated

CITY OF BLACK DIAMOND

\_\_\_\_\_  
Howard Botts  
Mayor of Black Diamond

\_\_\_\_\_  
Dated

Attested by:

\_\_\_\_\_  
Cris Kandior, City Clerk

\_\_\_\_\_  
Dated

Approved as to Form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Dated