

INTERLOCAL AGREEMENT

BETWEEN THE CITY OF MAPLE VALLEY, THE CITY OF BLACK DIAMOND, AND THE CITY OF COVINGTON FOR THE SOUTHEAST KING COUNTY COMMUTER RAIL AND TRANSIT CENTERS PROJECT

Recitals

WHEREAS, on July 23, 2008 the cities of Maple Valley, Black Diamond and Covington (“Parties”) held a joint Council meeting of the legislative bodies of the three cities in Black Diamond; and

WHEREAS, the agenda for the July 23, 2008 joint meeting included a presentation from the City of Maple Valley regarding the use of Diesel Multiple Units (DMU); and

WHEREAS, the Cities of Maple Valley, Black Diamond and Covington formed a working group of staff and a working group of elected officials to explore the idea of using DMU’s on the existing Burlington Northern Santa Fe line to create a commuter rail connection from Maple Valley, through Covington, into Auburn; and

WHEREAS, the Cities of Auburn and Enumclaw were invited to join the elected officials working group, Auburn’s Mayor has offered an employee to assist the elected officials working group’s efforts, and Enumclaw’s Mayor has offered his support and encouragement; and

WHEREAS, the Cities of Maple Valley, Black Diamond and Covington successfully lobbied the Washington State Legislature during the 2009 Legislative Session to fund a feasibility study for implementation of the SE King County Commuter Rail and Transit Centers Project (“Project”) in Southeast King County; and

WHEREAS, the 2009 Washington Legislature approved \$400,000 for a feasibility study for the Project in Section 220 of the Transportation budget; and

WHEREAS, the Cities of Maple Valley and Covington have taken a leadership role in regards to developing the working groups for the Project, and lobbying both the State of Washington Legislature and the federal government through Congressman Reichert, and Senators Murray and Cantwell; and

WHEREAS, an appropriation for the Project has been requested by Congressman Reichert for fiscal year 2010 in the Transportation, Housing and Urban Development budget; and

WHEREAS, the Cities of Maple Valley, Black Diamond and Covington desire to formalize their working relationship through an interlocal agreement, recognizing that

joint grant monies may be received for the Project that will need to be managed and properly accounted for; and

WHEREAS, the State of Washington provides legal authority for governments to engage in joint or cooperative undertakings in Ch. 39.34 RCW.

Now, therefore, the parties mutually agree to the terms set forth below:

Terms:

1. Purpose. The primary purpose of this Agreement is to create an agreement between the City of Maple Valley and the Cities of Black Diamond and Covington (“Parties”) for the receipt and distribution of joint grant funds from state and/or the federal government or from any private entity in support of the project to be known as “Southeast King County Commuter Rail and Transit Centers Project.” A secondary purpose of this agreement is to formalize an already existing working relationship between the Parties to continue the working groups of staff and elected officials, and to continue to seek funding sources to realize the vision of creating a commuter rail link for the citizens of Maple Valley and Covington and the surrounding communities in Southeast King County.

2. Organization. No separate legal entity is created by this Agreement. The City Managers of Maple Valley and Covington shall be the administrators of this Agreement.

3. Duration. This Agreement shall be effective through December 31, 2010 and shall be automatically renewed for one year periods each January 1st beginning in 2011 unless terminated in writing according to Section 4, herein.

4. Fiscal Agent.

A. The City of Maple Valley is designated as the fiscal agent under this Agreement. As fiscal agent, the City of Maple Valley will be designated as such on all joint grant applications submitted by the Parties to any State or federal agency, or to any profit or nonprofit entity, and will assume all obligations associated with the role of fiscal agent. It is agreed by the Parties that any grant application submitted by any Party to any State or federal agency for this project prior to the Parties’ execution of this Agreement shall be subject to the provisions of this Agreement, and that Maple Valley will be the recipient of those funds should they be awarded. Should joint grant monies be awarded, the City of Maple Valley will be the recipient of the monies, and will deposit the monies into a separate interest bearing account to be known as the “SE King County Commuter Rail Account.” Should grant moneys be received in advance of payments made pursuant to this Agreement, interest revenue at the State of Washington Local Government Investment Pool (LGIP) rate shall be added to the account. Should grant monies be received on a cost reimbursement basis, interest expense at the State of Washington Local Government Investment Pool (LGIP) rate shall be recorded as an additional cost for payments made pursuant to this Agreement prior to reimbursement. If the grantor agency does not allow interest expense as a use of grant funds or if it disallows any

additional costs, the Parties agree to reimburse the City of Maple Valley for their proportionate share of the interest expense based on a percent of their State certified 2010 population. The City of Maple Valley will be identified as the fiscal agent in any contracts awarded to third parties for whom joint grant monies will be used for payment. All contracts awarded to carry out the intent of this Agreement will be awarded by the City of Maple Valley. The City of Maple Valley will pay all invoices for services and/or purchases made from this account. The City of Maple Valley will provide quarterly reports of expenditures and revenues to the City Managers of Maple Valley and Covington. The City of Maple Valley will be responsible for administering the SE King County Commuter Rail Account in accordance with principles and guidelines established by the Washington State Auditor.

1. Contracts over \$7,500 will require the mutual assent of the City Managers of the Cities of Maple Valley and Covington and the Mayor of the City of Black Diamond prior to award of the contract. Such assent shall be provided in writing to the Finance Director for the City of Maple Valley. Contracts over \$25,000 shall be subject to approval by the City Council of the City of Maple Valley pursuant to adopted contracting policies. Should those adopted policies be amended, the policies in effect at the time of the contract award shall govern.

B. The City of Maple Valley will receive two percent (2%) of joint grant monies awarded to pay for the administrative costs of administering joint grant funds, paying accounts receivable, and carrying out other administrative duties as fiscal agent.

5. Termination. This Agreement may be terminated by any Party, as to that Party only, by providing written notice of intent to terminate to the other Parties ninety (90) days in advance of the date of termination. If the Cities of Black Diamond or Covington terminates this Agreement, the City of Maple Valley shall continue to administer joint grant funds applied for and received during the period of time prior to the termination date. The notice of intent to terminate shall propose a disposition of personal property acquired under this Agreement, as well as a method for the continued administration of joint grant funds on receipt by the City of Maple Valley, by including a draft Termination Agreement with its notice of intent to terminate. A party that provides notice of intent to terminate its participation in this Agreement shall also notify any granting agency for which it has applied for grant funding of its intent to terminate its participation in this Agreement. This Agreement may be terminated at any time by the written agreement of all Parties.

6. Acquisition and Disposition of Personal and Real Property.

A. Should a party to this Agreement acquire personal property in the course of carrying out the purposes of this Agreement, the following will occur:

1. Such property shall be identified by common name, brand name, and serial number if applicable, and all associated parts, implements or attachments will be separately identified; and

2. Such property shall be valued according to its purchase price (if new) or fair market value (if not new).

3. After the property has been identified and valued, a bill of sale shall be executed in order to sell the property to the City of Maple Valley for purposes of insuring the item. As fiscal agent under this Agreement, the City of Maple Valley will hold the property. The original bill of sale shall be provided to the City of Maple Valley, with copies to document listing the above information shall be created with copies provided to the City Managers of Maple Valley and Covington and the Mayor of Black Diamond. The sales price paid by the City of Maple Valley for the item will be no more than the purchase price paid (if new); or the fair market value (if not new). Funds paid by the City of Maple Valley for any item of personal property shall be paid from the SE King County Commuter Rail Account.

4. The party that provides notice of intent to terminate this Agreement is under an obligation to propose a Termination Agreement for the disposition of personal property as well as the continued administration of joint grant funds on receipt by the City of Maple Valley, pursuant to Section 4, herein.

5. Should a party seek to terminate this Agreement the City of Maple Valley will provide an accounting of personal property it holds under this Agreement, as well as an accounting of joint grant funds on receipt and contracts executed under the authority of this Agreement to the City Manager of Covington and the Mayor of Black Diamond. The City Managers/City Administrators will meet to discuss the proposed Termination Agreement with the goal of reaching resolution on the terms of such Agreement. If the City Managers/City Administrators cannot reach agreement on the proposed terms of a Termination Agreement, each party shall choose one elected official from each city to meet jointly with each City Manager/City Administrator to resolve the matter. If, after the City Managers/City Administrators meet with the elected officials, no resolution can be reached, the Parties agree to binding arbitration through the American Arbitration Association, with each party being solely responsible for its costs and any associated legal fees.

B. No party anticipates acquiring real property under this Agreement. Should real property need to be acquired, the Parties will execute a written amendment to this Agreement.

7. Staff Working Group. The Parties will assign staff to a working group to advance the purposes of this Agreement. The staff working group will consist, at a minimum, of the City Managers of the Cities of Maple Valley and Covington, and/or their designees and the City Administrator of Black Diamond. By mutual agreement of the City Managers/City Administrator, the staff working group may consist of staff from other Southeast King County cities with an interest in the DMU project, and may consist of consultants under contract to either party. The purpose of the staff working group will be to explore funding opportunities and prepare grant applications to carry out the purposes of this agreement; to work with third parties involved in the award of monies from the

2009 Washington State Legislature for the feasibility study; to prepare lobbying strategies; to form working partnerships with regional, state and/or federal agencies involved in transit operation and development; to mutually agree on consultant contracts and other contracts to be let by the City of Maple Valley as fiscal agent under this Agreement; to carry out the day to day operations involved in achieving the purposes of this Agreement, and to perform other duties by mutual agreement of the City Managers/City Administrator.

8. Elected Officials Working Group. The Parties will designate staff assistance from their respective jurisdictions to an elected officials working group. The elected officials working group will consist of two elected officials from the City of Maple Valley, two elected officials from the City of Black Diamond and two elected officials from the City of Covington, appointed by their respective legislative bodies. The elected officials working group, at its discretion and by mutual agreement of all the members, may invite other elected or appointed officials to join the working group on either a permanent or occasional basis and may, similarly, invite regional, state, federal or private entity agents to join the working group. The elected officials working group will endeavor to meet monthly. The elected officials working group's purpose will be advisory to the Parties' legislative bodies on policy matters and to the staff working group on administrative matters.

9. Records Maintenance.

A. All Parties shall maintain books, records and documents that sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by the other party, its authorized representative, or the State Auditor. Each party will retain records according to the State Archivist's retention schedule for the type of records involved.

B. The City of Maple Valley shall retain all books, records, documents and other materials relevant to its role as fiscal agent under this agreement for six (6) years after its expiration as fiscal agent. The City of Maple Valley agrees that the City of Covington and the City of Black Diamond's authorized representatives shall have full access and right to examine any of said materials at all reasonable times during said period. Advance notice of the request to inspect records shall be provided to the City of Maple Valley as a courtesy and to allow time to gather records which may be archived.

10. Indemnification and Liability.

A. Each party shall indemnify and hold all other parties and their agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the arising out of, in connection with, or incident to the execution of this Agreement; provided, however, that if such claims are

caused by or result from the concurrent negligence of any party, this indemnity provision shall be valid and enforceable only to the extent of the negligence of that party; and provided further, that nothing herein shall require any party to hold harmless or defend any other party, its agents, employees and/or officers from any claims arising from the sole negligence of another party, its agents, employees, and/or officers. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

B. No liability shall attach to any party by reason of entering into this Agreement except as expressly provided herein.

11. Notice. Any notice required under this Agreement shall be sent via first class mail, return receipt requested, to the person and address identified in this Section. Such notice may also be sent via facsimile, or as a .pdf file attached to an email addressed to the person identified in this Section, but such notice shall be considered supplemental and shall not serve as required notice. Required notices under this Agreement shall be sent to:

City of Maple Valley:

David W. Johnston, City Manager
P.O. Box 320
Maple Valley, WA 98038

City of Covington:

Derek Matheson, City Manager
16720 SE 271st Street
Suite 100
Covington, WA 98042

City of Black Diamond:

Gwen Voelpel, City Administrator
P.O. Box 599
Black Diamond, WA 98010

12. Political Activity Prohibited. None of the funds, materials, property or services provided directly or indirectly under the Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

13. Counterparts. This Agreement shall be executed in counterparts, each of which shall be deemed an original, signed by the City Manager or other authorized person representing each party after each party's respective City Council has authorized execution of the same.

14. Amendments. This Agreement may be amended or modified only by the unanimous consent of the Parties, and shall be in writing and be executed in the same manner as the original Agreement, after authorization for the amendment by each party's City Council.

It is contemplated that another City or Town may become a later-added party to this Agreement. Exhibit A to this Agreement constitutes a form Addendum that may be utilized by another City or Town to facilitate this process. The form Addendum must be authorized by the City or Town Council of the City or Town that desires to become a party to this Agreement. Each City that is already a party to this Agreement must receive a signed original of the Addendum. Execution of the form Addendum by a later-added party will not require further action by entities who are already signatories to the Agreement.

15. No Third Party Beneficiaries. This Agreement is entered into for the sole benefit of the Parties, their successors and assigns, and no other individual, entity or agency shall have any right of action under the terms of this Agreement.

16. Attorney Fees and Costs. If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

17. Severability.

A. If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

18. Entire Agreement; Waiver. This Agreement contains a complete integrated understanding and agreement between the Parties and supersedes any understanding, agreement, or negotiations whether oral or written not set forth herein or in any written amendments hereto duly executed by both parties. It is also agreed by the Parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

**CITY OF
MAPLE VALLEY**

**CITY OF
COVINGTON**

**CITY OF
BLACK DIAMOND**

David W. Johnston
City Manager

Derek M. Matheson
City Manager

Howard Botts
Mayor

ATTEST:

ATTEST:

ATTEST:

Irvalene C. Moni
City Clerk

Sharon Scott
City Clerk

Brenda Martinez
City Clerk

Approved as to form:

Approved as to form:

Approved as to form:

Christy A. Todd
City Attorney

Sara Springer
City Attorney

Loren Combs
City Attorney

Attachments:

Authorizing City of Maple Valley Resolution R-09-713

Authorizing City of Black Diamond Resolution _____

Authorizing City of Covington Resolution _____

EXHIBIT A

**FORM ADDENDUM TO ADD A PARTY TO THE SOUTHEAST KING COUNTY
COMMUTER RAIL AND TRANSIT CENTERS PROJECT**

WHEREAS, the Cities of Maple Valley, Black Diamond and Covington have executed an Interlocal Agreement (“Agreement”) for facilitating grant the administration of grant funding relating to the Southeast King County Commuter Rail and Transit Centers Project; and

WHEREAS, the Agreement contemplated that other cities or towns may later desire to become a party to the Agreement; and

WHEREAS, the City [or Town] of _____ desires to become a party to the Agreement; and

WHEREAS, the City [or Town] Council of the City [or Town] of _____ has considered the terms of the Agreement and by Resolution has authorized the City Manager [or City Administrator or Mayor] of the City [or Town] of _____ to execute this Addendum to the Agreement in order to become a signatory to the Agreement;

NOW, THEREFORE, be it Resolved by the City [or Town] Council of the City [or Town] of _____ as follows:

1. Authorization. The City Manager [or City Administrator or Mayor] is hereby authorized to execute this Addendum to the Interlocal Agreement between Maple Valley, Black Diamond and Covington for the Southeast King County Commuter Rail and Transit Centers Project in order that the City [or Town] of _____ becomes a signatory to that Agreement. A copy of the Agreement is filed with the City Clerk.

PASSED BY THE CITY [or Town] COUNCIL OF _____ THIS _____
DAY OF _____, 20____.

[NAME OF AUTHORIZED SIGNATORY]

ATTEST:

City [or Town] Clerk

Authorizing Resolution Number: _____