

INTERLOCAL AGREEMENT

For Duwamish Basin Stewardship

PREAMBLE

THIS AGREEMENT ("Agreement") is entered into pursuant to Chapter 39.34 Revised Code of Washington ("RCW") by King County, The City of Seattle represented by Seattle Public Utilities Department, the City of Tukwila, and the Port of Seattle (individually a "Party" and collectively the "Parties");

WHEREAS, Chapter 39.34 RCW authorizes government entities to contract to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform;

WHEREAS, Puget Sound Chinook salmon and bull trout were listed as threatened under the Endangered Species Act ("ESA") in 1999, the steelhead trout were listed as threatened under ESA in 2007, and the Southern Resident Orca were listed as endangered in 2005;

WHEREAS, the Parties recognize and respect the present-day and historical importance of the watershed and its resources to tribal culture, economy and customs;

WHEREAS, the Parties recognize and value the present-day and historical connection of its cities and unincorporated communities to the rivers, lakes and other natural resources of the watersheds;

WHEREAS, the Parties are committed to ensuring that community interests, particularly those of the underserved communities, within the **Duwamish Service Area** are represented in conservation and habitat restoration actions;

WHEREAS, the Parties recognize the need to support economic vitality and environmental stewardship within and around the Duwamish valley industrial complex;

WHEREAS, the Parties recognize their participation in the Green-Duwamish Watershed Ecosystem Forum ("WRIA 9 Forum") and efforts to implement the Green-Duwamish & Central Puget Sound Salmon Recovery Plan ("WRIA 9 Plan") and the applicable portions near Skyway of the Lake Washington/Cedar/Sammamish Watershed Chinook Salmon Conservation Plan ("WRIA 8 Plan") demonstrates a commitment to work proactively and cooperatively to address the ESA listings;

WHEREAS, the Parties share interests in and responsibility for addressing long-term watershed planning and conservation for the Duwamish Sub-watershed and within the unincorporated King County areas of North Highline and Skyway (jointly, the "**Duwamish Service Area**") for the purposes of implementing the WRIA 9 Plan and the applicable portions near Skyway of WRIA 8 Plan;

WHEREAS, the Parties recognize their participation in the efforts to implement the WRIA 8 and 9 Plans demonstrates a commitment to work proactively and cooperatively to address the ESA listings;

WHEREAS, the Parties recognize achieving salmon recovery and watershed health goals requires a commitment to, and acceleration of, the collaborative implementation of salmon and watershed conservation actions;

WHEREAS, the Parties recognize the value of stewardship or watershed stewards and have a shared goal to bring stewardship capacity to the **Duwamish Service Area** focused on land conservation and habitat restoration, community engagement and partner coordination, as well as improved environmental sustainability of the Duwamish Valley industrial complex along the river's shorelines;

WHEREAS, the Parties have an interest in developing and implementing Chinook salmon habitat restoration projects, conserving open space, and working with community organizations and private businesses to promote creative solutions for stormwater management, floodplain restoration, riparian restoration, climate adaptation, and other similar environmental activities in the **Duwamish Service Area**;

WHEREAS, in addition to the salmon plans, numerous other studies and planning efforts serve to inform stewardship in the **Duwamish Service Area**, including, but not limited to, the Duwamish Blueprint, WRIA 9; Re-Green the Green Revegetation Strategy, WRIA 9; Duwamish Valley Action Plan, City of Seattle; Lower Duwamish Waterway Group efforts; Lower Duwamish River Habitat Restoration Plan, Port of Seattle; Lower Duwamish River NRDA Restoration Plan, NOAA; Our Green/Duwamish Implementation Plan; RainWise and stormwater retrofit efforts, King County and City of Seattle; North Highline (White Center) Subarea Plan, King County Local Services; King County Land Conservation Initiative, Strategic Climate Action Plan, and the Clean Water and Healthy Habitat Strategic Plan;

WHEREAS, the Parties support implementation of the Puget Sound Partnership Action Agenda to restore the health of the Puget Sound as it relates to salmon recovery and watershed health;

WHEREAS, the Port has a Century Agenda goal to create, restore or enhance forty additional acres of habitat in the Green-Duwamish Watershed and Elliott Bay, as per the Motion of the Port of Seattle Commission dated December 4, 2012, and also has a mitigation bank focused on habitat restoration sites within King County; and

WHEREAS, the Parties agree that a dedicated position for a Duwamish Basin Steward will support collaboration and advance restoration efforts with communities in the **Duwamish Service Area**.

NOW, THEREFORE, in exchange for the consideration described in this Agreement, the Parties hereto do mutually covenant and agree as follows:

MUTUAL CONVENANTS AND AGREEMENTS

1. **DEFINITIONS.** For purposes of this Agreement, the following terms shall have the meaning provided for below:

- 1.1 **DUWAMISH BASIN MANAGEMENT TEAM ("DBMT"):** The **DBMT**, created herein, is the guiding body responsible for directing, coordinating, and adapting stewardship actions in the **Duwamish Service Area** and is comprised of designated representatives of eligible governments who have authorized the execution of and become Parties to this Agreement.

- 1.2 **DUWAMISH SERVICE AREA:** The **Duwamish Service Area** is depicted in Exhibit C, attached herein and incorporated by reference. The **Duwamish Service Area** comprises of the Duwamish Sub-watershed, as defined in the WRIA 9 Plan, as well as the two unincorporated urban areas that overlap in part with the Duwamish Sub-watershed. To the west, the **Duwamish Service Area** includes the North Highline unincorporated area located between Seattle and Burien, including Glendale. To the east, the **Duwamish Service Area** includes the Skyway unincorporated area bounded by Seattle, Tukwila, and Renton, and extending to Lake Washington to include Bryn Mawr,

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

- 2.1 This Agreement between King County and the other Parties to this Agreement states the terms under which King County, through its Water and Land Resources Division, will provide Basin Stewardship services in the **Duwamish Service Area**. The services to be provided are described in **Exhibit A**, attached to this Agreement and incorporated herein and made a part hereof.

- 2.2 To provide a mechanism for securing technical assistance and funding from federal and state agencies and other sources.

It is not the purpose or intent of this Agreement to create, supplant, preempt or supersede the authority or role of any jurisdiction, governmental entity or natural resource policy body.

3. **EFFECTIVE DATE AND TERM.** This Agreement shall become effective once it has been authorized by the governing bodies of all Parties and each Party has executed this Agreement. Once effective, this Agreement shall remain in effect until December 31, 2026; provided, however, that this Agreement may be extended as the DBMT representatives of

all Parties may agree to in writing, with such extension being effective upon its execution by each of the Parties. Such extension shall bind only those Parties executing the extension.

4. **DUWAMISH STEWARDSHIP MANAGEMENT**

The Parties to this Agreement hereby establish a **DBMT** to manage the Duwamish Basin Stewardship program (“Duwamish Program”) for carrying out the purposes of this Agreement.

- 4.1 Each Party to this Agreement shall appoint one (1) representative to serve on the **DBMT**. **DBMT** representatives should be authorized to make prudent stewardship and programmatic decisions on behalf of the Parties.
- 4.2 The **DBMT** will meet at least four times per calendar year, and more frequently if the **DBMT** determines it necessary, to review Duwamish Program workplan progress, as well as partnerships that would benefit the Program, including potential funding. Each year, prior to October 1, the **DBMT** shall develop a draft work program and budget for consideration by the **DBMT** for the following calendar year.
- 4.3 King County will perform day-to-day project management and direction and communicate with other **DBMT** participants as needed to conduct Duwamish Program activities.
- 4.4 King County will schedule, facilitate, and provide summaries of all **DBMT** meetings to each Party during implementation of the Duwamish Program.
- 4.5 The **DBMT** will strive to make decisions unanimously, considering input from subject matter experts when mutually agreed upon. Each participant agrees to use its best efforts and exercise good faith in consensus decision-making. If unanimity cannot be reached, decisions will be made by majority constituted by no less than seventy-five (75) percent of the voting participants in the **DBMT**. Each Party to this Agreement shall have one vote in those circumstances.
- 4.6 If any dispute arises between the Parties related to program decisions, the Parties agree to seek to resolve the dispute informally through a meeting between a designee of the respective Parties before taking any action including, but not limited to, termination of this Agreement.
- 4.7 King County, on behalf of the **DBMT**, may contract with consultants, community partner organizations, or any other entities for any lawful purpose related hereto.
- 4.8 The **DBMT** shall adopt rules and procedures that are consistent with its purposes as stated herein and are necessary for its operation.

5. **OBLIGATIONS OF PARTIES; BUDGET; RULES.**

- 5.1 Each Party shall be responsible for meeting only its individual obligations hereunder and as established in the annual budget adopted by the **DBMT** under this Agreement, including all such obligations related to the **DBMT** funding, technical support, and participation in related planning, and activities as set forth herein. It is anticipated that separate actions by the legislative bodies of the Parties will be necessary from time to time in order to carry out these obligations.
- 5.2 The **DBMT** shall, by October 1 of each year, establish an annual budget that provides for the level of funding and total resource obligations of the Parties for the following calendar year. Such obligations are to be allocated on a proportional basis in accordance with the initial allocation formula for 2022 set forth in **Exhibit B**. The **Exhibit B** data shall be updated by King County every year, with automatic adjustments for inflation, based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). If an additional government becomes party to this Agreement, the additional government's initial cost share shall be determined jointly by the Parties and will be included in **Exhibit B**. Parties to this Agreement may elect to secure grant funding to meet their individual obligations.
- 5.3 By November 1 of each year, the Parties shall provide a status update on their continued participation in this Agreement for the following year.
- 5.4 The **DBMT** will work collaboratively to identify and secure additional, regular funding for the Duwamish Basin Steward position, as described in Section 5.4.2 below, and the Duwamish Program, and set priorities for which entity(ies) pursue which grants for what purpose. The allocation of these funds to support the position and/or the work program shall be determined by the **DBMT**, subject to any conditions attached to such funding. Parties to this Agreement may also elect to secure grant funding to meet their individual obligations.
- 5.5 King County shall:
- 5.5.1 provide services as described in **Exhibit A**;
 - 5.5.2 Hire and maintain a full-time Duwamish Basin Steward to lead delivery of services described in Exhibit A and assist the **DBMT**;
 - 5.5.3 work with representatives of the other Parties to coordinate provision of services, as described in **Exhibit A**;
 - 5.5.4 designate one representative to serve on the **DBMT** and participate in **DBMT** meetings to carry out **DBMT** responsibilities in Section 4;
 - 5.5.5 maintain the budget established by the **DBMT** consistent with RCW 39.34;
- and

- 5.5.6 pay a portion of the costs associated with its delivery of services on a proportional basis, as described in **Exhibit B**.
 - 5.6 Each other Party to this Agreement shall:
 - 5.6.1 work with King County staff to coordinate provision of services, as described in **Exhibit A** and as otherwise needed;
 - 5.6.2 designate one representative to serve on the **DBMT** and participate in **DBMT** meetings to carry out **DBMT** responsibilities in Section 4; and
 - 5.6.3 pay for services as described below and in **Exhibit B**.
 - 5.7 The **DBMT** shall oversee the expenditure of budgeted funds and allocate the utilization of resources contributed by each Party or obtained from other sources in accordance with the approved annual work program.
 - 5.8 Funds collected from the Parties or other sources on behalf of the **DBMT** shall be maintained in a special fund by King County as *ex officio* treasurer on behalf of the **DBMT**, pursuant to rules and procedures established and agreed to by the **DBMT** and King County. Such rules and procedures shall set out billing practices and collection procedures and any other procedures as may be necessary to provide for its efficient administration and operation.
 - 5.9 Costs and Billing
 - 5.9.1 Parties agree to pay the costs as set out in **Exhibit B** within sixty (60) days of receipt of invoice.
 - 5.9.2 King County will bill the Parties for their shares of service costs for the current calendar year on an annual basis by no later than September 1st.
 - 5.10 Parties may inspect and shall provide access to all relevant records that are maintained by the Parties and/or **DBMT** in connection with this Agreement.
6. **LATECOMERS**. Governments located in King County, lying wholly or partially within the Duwamish Service Area, which have not become a Party to this Agreement within twelve (12) months of the effective date of this Agreement may become a Party by obtaining written consent of all participants of the **DBMT**. The participants of the **DBMT** and any governments seeking to become a Party shall jointly determine the terms and conditions under which the government may become a Party, which shall include payment by such government to King County, of the amount of moneys constituting the government's fair and proportionate share of all prospective costs as determined by the Parties and set out in **Exhibit B**. Any government that becomes a Party pursuant to this section shall thereby assume the same general rights and responsibilities as all other Parties to this Agreement, including participation in the **DBMT** as described in Section 5.

7. **Notice**

Any notice required to be given under this Agreement will be directed to the Party at the address below. Notice will be considered effective upon receipt or twenty-four hours after mailing, whichever is earlier.

King County:

Department of Natural Resources and Parks
Water and Land Resources Division
201 S. Jackson St., Suite 600
Seattle, WA 98104

Attn: _____

Email:

The City of Seattle:

Attn: _____

Email:

City of Tukwila:

Port of Seattle:

Attn: _____

Email:

Attn: Kathleen Hurley

Email: Hurley.K@portseattle.org

8. **TERMINATION.** Termination can only occur on an annual basis, beginning on January 1 of each calendar year, and then only if the terminating Party, through action of its governing body, provides written notice of its intent to terminate at least forty-five (45) days prior to January 1. The terminating Party shall remain fully responsible for meeting all of its obligations, under this Agreement, through the end of the calendar year in which such notice is given, together with any other costs that may have been incurred on behalf of such terminating Party up to the effective date of such termination. The Parties choosing not to exercise the right of termination shall each remain obligated to meet their respective share of the obligations of the **DBMT** as reflected in **Exhibit B**.

This Agreement may be terminated in its entirety at any time by the written agreement of all Parties.

9. **HOLD HARMLESS AND INDEMNIFICATION.** To the extent permitted by state and federal law, and for the limited purposes set forth in this Agreement, each Party shall protect, defend, hold harmless and indemnify the other Parties, their officers, elected officials, agents and employees, while acting within the scope of their employment as such, from and against any and all claims (including demands, suits, penalties, liabilities,

damages, costs, expenses, or losses of any kind or nature whatsoever) arising out of or in any way resulting from such Party's own negligent acts or omissions related to such Party's participation and obligations under this Agreement. Each Party to this Agreement agrees that its obligations under this subsection extend to any claim, demand and/or cause of action brought by or on behalf of any of its employees or agents. For this purpose only, each Party, by mutual negotiation, hereby waives, with respect to the other Parties only, any immunity that would otherwise be available against such claims under the industrial insurance act provisions of Title 51 RCW. In the event that any Party incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be recoverable from the responsible Party to the extent of that Party's culpability. The provisions of this Section shall survive and continue to be applicable to Parties exercising the right of termination pursuant to Section 8.

10. **NO ASSUMPTION OF LIABILITY.** In no event do the Parties to this Agreement intend to assume any responsibility, risk, or liability of any other Party to this Agreement or otherwise with regard to any Party's duties, responsibilities, or liabilities under the ESA, or any other act, statute, regulation, or ordinance of any local municipality or government, the State of Washington, or the United States.

11. **VOLUNTARY AGREEMENT.** This Agreement is voluntary and is acknowledged and agreed that no Party is committing to adopt or implement any actions or recommendations that may be contained in the WRIA 8 and 9 Plans or other plans that inform stewardship in the **Duwamish Service Area**.

12. **NO PRECLUSION OF ACTIVITIES OR PROJECTS.** Nothing herein shall preclude any one or more of the Parties from choosing or agreeing to fund or implement any work, activities or projects associated with any of the purposes hereunder by separate agreement or action, provided that any such decision or agreement shall not impose any funding, participation, or other obligation of any kind on any Party to this Agreement which is not a party to such decision or agreement.

13. **NO THIRD PARTY RIGHTS.** Nothing contained in this Agreement is intended to, nor shall it be construed to, create any rights in any third party, including without limitation the WRIA 8 Salmon Recovery Council or WRIA 9 Watershed Ecosystem Forum, National Oceanic and Atmospheric Administration - Fisheries, United States Fish and Wildlife Service, any agency or department of the United States, or, the State of Washington, or to form the

basis for any liability on the part of the **DBMT** or any of the Parties, or their officers, elected officials, agents and employees, to any third party.

- 14. **AMENDMENTS.** This Agreement may be amended, altered or clarified only by the unanimous, written consent of the Parties to this Agreement, and requires authorization and approval by each Party's governing body.

- 15. **COUNTERPARTS.** This Agreement may be executed in counterparts.

- 16. **APPROVAL BY PARTIES' GOVERNING BODIES.** This Agreement has been authorized and approved for execution by each Party's governing body.

- 17. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement among the Parties, and supersedes all prior negotiations, representations, and agreements, oral or otherwise, regarding the specific terms of this Agreement.

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

THE CITY OF SEATTLE:

PORT OF SEATTLE

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

KING COUNTY

CITY OF TUKWILA

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____