

**INTERLOCAL AGREEMENT BETWEEN
THE CITIES OF MAPLE VALLEY AND COVINGTON
FOR STORAGE, USE, AND PAYMENT OF DE-ICER**

THIS INTERLOCAL AGREEMENT, hereinafter "Agreement", is entered into between the CITY OF MAPLE VALLEY, hereinafter "Maple Valley", and the CITY OF COVINGTON, hereinafter "Covington" (collectively the "Parties," or in the singular "Party").

WHEREAS, Maple Valley and Covington are public agencies as defined by Ch. 39.34 of the Revised Code of Washington ("RCW"), and are authorized to enter into interlocal agreements on the basis of mutual advantage and thereby to provide services and facilities in the manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs of local communities; and

WHEREAS, Covington's Public Work's Department purchases de-icer product for use on the City's roads in inclement weather and maintains a storage facility for holding tanks for the de-icer; and

WHEREAS, Maple Valley desires to utilize the resources of Covington to assist Maple Valley in purchasing and storing de-icer; and

WHEREAS, Maple Valley has agreed to compensate Covington for purchasing, storing, and distributing the de-icer;

NOW THEREFORE, in consideration of the terms and provisions contained herein, it is agreed between Maple Valley and Covington as follows:

1. Purpose. It is the purpose of this Agreement to establish the framework to effectuate Maple Valley's desire to have Covington purchase and store de-icer for use by Maple Valley.

2. Administration of Agreement. To carry out the purpose of this Agreement, Maple Valley and Covington will each appoint a representative to administer the terms of this Agreement.

Maple Valley Administrator:
Steve Clark, Public Works Director
22035 SE Wax Road
P.O. Box 320
Maple Valley, WA 98038
(425) 413-8800

Covington Administrator:
Glenn Akramoff, Public Works Director
16720 SE 271st Street
Suite 100
Covington, WA 98042
(253) 638-1110

3. Purchase, Storage, and Distribution of De-icer.

3.1 Purchase. Covington shall purchase de-icer product according to state law and Covington purchasing rules. Upon purchase, Covington shall allocate a portion of its purchased de-icer product to Maple Valley. The de-icer product allocated to Maple Valley shall be stored in Maple Valley's storage tank as described in Section 3.2. Covington shall refill both Covington's and Maple Valley's storage tanks at 33% percent of capacity. Covington shall provide an accounting for the de-icer product allocated to Maple Valley as described in Section 5.

3.2 Storage. Covington shall allow Maple Valley to place a storage tank at Covington's storage facility located at 17852 SE 256th Street, Covington, for the purpose of holding Maple Valley's allocated portion of de-icer product as described in Section 3.1. Maple Valley shall be responsible for purchasing an appropriate tank to store the de-icer product and for delivering and positioning the tank at Covington's storage facility. The tank shall be limited to a size that does not increase the cost of the facility. Covington shall provide Maple Valley unlimited access to the storage facility and their storage tank

Maple Valley shall designate an employee and a back-up employee to access Covington's storage facility. Maple Valley shall work cooperatively with Covington to ensure that the storage facility remains secure and to comply with Covington's rules and procedures for accessing its storage facility.

3.3 Distribution. Distribution of the de-icer product shall be performed by the responsible Party within that Party's respective jurisdiction. Nothing in this Agreement prevents a Party from voluntarily assisting with distribution of de-icer product within the other Party's jurisdiction.

4. Term of Agreement. This Agreement shall become effective on the later of the last date this Agreement is ratified by the legislative body of Covington and the legislative body of Maple Valley and subsequently executed by each Party according to that Party's policies and procedures. Unless terminated by either Party pursuant to the terms of this Agreement, this Agreement shall remain in full force and effect until December 31, 2014. This Agreement may be extended by mutual written agreement of the Parties subject to the ratification of such extension by the legislative body of each city.

5. Payment to Maple Valley. In consideration of this Agreement and the services provided, Maple Valley shall pay Covington pursuant to the following provisions:

5.1 Payments for Materials and Services. Maple Valley shall pay Covington for the costs of de-icer product purchased pursuant to Section 3.1.

5.2 Billing Statement. Covington shall submit a monthly statement to Maple Valley that shall contain the amount of de-icer product purchased in a form agreed upon by the administrators:

Payments for materials shall be made by Maple Valley each month within thirty (30) days of receipt of the billing statement from Covington.

5.3 Billing Statement Dispute. In the event that there is a dispute regarding the amount of money owed by Maple Valley to Covington, the Agreement administrators shall make every effort to resolve such dispute. In the event that there is no resolution to the dispute, the Agreement administrators shall forward the dispute to each Party's City Manager for resolution. In the event there is no resolution after review by the Parties' City Managers, the disputed amount shall be placed into the registry of the King County Superior Court until the dispute is resolved by agreement of the Parties or in a court with jurisdiction over the subject matter of the dispute.

5.4 Additional Appropriations. To the extent that compliance with the terms of this Agreement requires future appropriations beyond current appropriation authority, each of the Parties' obligations herein are contingent upon the appropriation of sufficient funds by that Party's legislative authority. If no such appropriation is made for either Party, this Agreement will terminate at the close of the appropriation year for which the last appropriation that funds for these activities was made.

5.5 Reconciliation of Amount Due After Termination or Expiration. Within thirty (30) days of the effective date of this Agreement's expiration or earlier termination, Covington shall submit to Maple Valley a statement as described in Subsection 5.2 of this Agreement. Within thirty (30) days of submitting the statement, the Parties shall reconcile the account and determine how much money Maple Valley owes to Covington for unpaid materials and services. Final payment and settlement of accounts shall occur within ninety (90) days of the effective date of termination of the Agreement.

6. Ownership of Property. The Parties to this Agreement do not contemplate the joint acquisition of any property to carry out the purposes of this Agreement. Any property owned by Maple Valley shall remain the property of Maple Valley, and any property owned by Covington shall remain the property of Covington.

7. Termination.

7.1 Termination by Notice. This Agreement may be terminated by either Party upon it providing the other Party with sixty (60) days advance written notice of the effective date of such termination.

7.2 Termination by Mutual Written Agreement. This Agreement may be terminated at any time by mutual written agreement of the Parties.

7.3 Termination for Breach. Either party may terminate this Agreement with fourteen (14) days advance written notice to the other Party for material breach of the terms of this Agreement except that disputes regarding billing statements shall be handled pursuant to Subsection 5.3.

7.4 General Termination Provisions. Upon termination of this Agreement, Maple Valley shall remove its storage tank from Covington's storage facility within fourteen (14) days of the effective date of termination and Maple Valley shall return to Covington within that same time period any keys or other property that was provided to Maple Valley in order to facilitate the purpose of this Agreement.

8. Indemnification and Hold Harmless. Covington agrees to defend, indemnify, and hold harmless Maple Valley and each of its employees, officials, agents, and volunteers from any and all losses, claims, liabilities, lawsuits, or legal judgments arising out of any negligent or tortious actions or inactions by Covington or any of its employees, officials, agents, or volunteers, while acting within the scope of the duties required by this Agreement. All costs, including but not limited to attorneys fees, court fees, mediation fees, arbitration fees, settlements, awards of compensation, awards of damages of every kind, etc., related to Covington's negligence, or tortious actions or inactions shall be paid by Covington or its insurer. This provision shall survive the expiration of this Agreement. This provision shall also survive and remain in effect in the event that a court or other entity with jurisdiction determines that this interlocal Agreement is not enforceable.

Maple Valley agrees to defend, indemnify, and hold harmless Covington and each of its employees, officials, agents, and volunteers from any and all losses, damages, claims, liabilities, lawsuits, or legal judgments arising out of any negligent or tortious actions or inactions by Maple Valley or any of its employees, officials, agents, or volunteers, while acting within the scope of the duties required by this Agreement. All costs, including but not limited to attorneys fees, court fees, mediation fees, arbitration fees, settlements, awards of compensation, awards of damages of every kind, etc., related to Maple Valley's negligence, or tortious actions or inactions shall be paid by Maple Valley or its insurer. This provision shall survive the expiration or earlier termination of this Agreement. This provision shall also survive and remain in effect in the event that a

court or other entity with jurisdiction determines that this interlocal Agreement is not enforceable.

It is further specifically and expressly understood and agreed that the indemnification provided herein constitutes each Party's waiver of immunity under Industrial Insurance, Title 51 RCW, solely to carry out the purposes of this indemnification clause. The Parties further acknowledge that they have mutually negotiated this waiver.

9. Insurance. Each party is a member of Washington Cities Insurance Authority Risk Pool (WCIA), and, consistent with policies established by WCIA, each Party is insured and agrees to maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by each Party, its agents, representatives, or employees.

No Limitation. Each Party's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of either Party to the coverage provided by such insurance, or otherwise limit either Party's recourse to any remedy available at law or in equity.

9.1 Minimum Scope of Insurance. Covington shall obtain insurance of the types described below:

- 9.1.1 Automobile liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall provide liability coverage for bodily injury, including personal injury or death, and property damage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- 9.1.2 Commercial general liability insurance shall cover liability arising from premises, operations, independent contractors, and personal injury and advertising injury, for bodily injury, including personal injury or death, products liability, and property damage.
- 9.1.3 Workers' compensation and employer's liability insurance in sufficient amounts as required by the industrial insurance laws of the State of Washington.
- 9.1.4 Professional liability insurance covering any negligent professional acts, errors, or omissions, for which each Party is legally responsible and for damages sustained by reason of or in the course of operation under this Agreement.

9.2 Minimum Amounts of Insurance. Each Party shall maintain the following insurance limits:

- 9.2.1 Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- 9.2.2 Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$3,000,000 general aggregate.
- 9.2.3 Professional Liability insurance shall be written with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

9.3 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for automobile liability, professional liability and commercial general liability insurance:

- 9.3.1 Covington's insurance coverage shall be primary insurance as respect to Maple Valley. Any insurance, self-insurance, or insurance pool coverage maintained by Maple Valley shall be excess of Covington's insurance and shall not contribute with it. Maple Valley's insurance coverage shall primary insurance as respect to Covington. Any insurance, self-insurance or insurance pool coverage maintained by Covington shall in excess of Maple Valley's insurance and shall not contribute with it.
- 9.3.2 Each Party's insurance shall be endorsed to state that coverage shall not be cancelled by either Party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Party affected by the cancellation.

9.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

9.5 Verification of Coverage. Each Party shall furnish the other Party with evidence of coverage evidencing that Party's insurance requirements before commencement of the work.

10. Independent Service Provider.

10.1 The Parties intend that an independent contractor relationship will be created by this Agreement. Neither Party will exercise control and direction over the work of the other Party, and is interested primarily in the results to be achieved. Subject to paragraphs herein, the implementation of services pursuant to this Agreement will lie solely within the discretion of the Party that is responsible for providing the services. No agent, employee, servant or representative of a Party shall be deemed to be an employee, agent, servant or representative of the other Party for any purpose, and the employees of the Party are not entitled to any of the benefits the other Party provides for its employees. Each Party will be solely and entirely responsible for its acts and for the acts of its agents,

employees, servants, subcontractors or representatives during the performance of this Agreement.

10.2 In the performance of the services herein contemplated each Party is an independent contractor with the authority to control and direct the performance of the details of the work; however, the results of the work contemplated herein must meet the approval of the other Party and shall be subject to the other Party's general rights of inspection and review to secure the satisfactory completion thereof.

10.3 As an independent contractor, each Party shall be responsible for the reporting and payment of all applicable local, state, and federal taxes.

11. Miscellaneous.

11.1 Non-Waiver of Breach. The failure of either Party to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

11.2 Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the Parties are unable to settle any dispute, difference or claim arising from the Parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court, King County, Washington, unless the Parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the Parties' performance of this Agreement, except as otherwise provided herein, each Party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the Parties' right to indemnification under this Agreement.

11.3 Assignment. This Agreement is not assignable by either Party, in whole or in part.

11.4 Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a

duly authorized representative of each Party and subject to ratification by the legislative body of each City.

11.5 Compliance with Laws. Each Party agrees to comply with all local, federal and state laws, rules, and regulations that are now effective or in the future become applicable to this Agreement.

11.6 Entire Agreement. The written terms and provisions of this Agreement, together with any exhibits attached hereto, shall supersede all prior communications, negotiations, representations or agreements, either verbal or written of any officer or other representative of each party, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the exhibits are hereby made part of this Agreement. Should any of the language of any exhibits to this Agreement conflict with any language contained in this Agreement, the language of this document shall prevail.

11.7 Severability. If any section of this Agreement is adjudicated to be invalid, such action shall not affect the validity of any section not so adjudicated.

11.8 Interpretation. The legal presumption that an ambiguous term of this Agreement should be interpreted against the Party who prepared the Agreement shall not apply.

11.9 No Third Party Beneficiaries. This Agreement is between the Parties and is not meant to benefit any third party.

11.10 Counterparts. This Agreement may be executed in counterparts.

11.11 Notice. All communications regarding this Agreement shall be sent to the Parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary. Any written notice hereunder shall become effective upon personal service or three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

IN WITNESS, the parties below execute this Agreement, which shall become effective on the last date entered below.

<p>COVINGTON:</p> <p>CITY OF COVINGTON:</p> <p>By: _____ (signature)</p> <p>Print Name: <u>Derek M. Matheson</u> Its <u>City Manager</u></p> <p>DATE: <u>12/8/09</u></p>	<p>MAPLE VALLEY:</p> <p>CITY OF MAPLE VALLEY:</p> <p>By: _____</p> <p>Print Name: <u>David W. Johnston</u> Its <u>City Manager</u></p> <p>DATE: <u>12/16/09</u></p>
<p>NOTICES TO BE SENT TO:</p> <p><u>Derek M. Matheson</u>, City Manager City of Covington 16720 SE 271st Street, Suite 100 Covington, WA 98042</p> <p>(253) 638-1110 (telephone) (253) 638-1122 (facsimile)</p> <p>With a copy to:</p> <p>Glenn Akramoff Public Works Director City of Covington 16720 SE 271st Street, Suite 100 Covington, WA 98042</p>	<p>NOTICES TO BE SENT TO:</p> <p>David W. Johnston, City Manager City of Maple Valley P.O. Box 320 Maple Valley, WA 98038</p> <p>(425) 413-8800 (telephone) (425) 413-4282 (facsimile)</p> <p>With a copy to:</p> <p>Steve Clark Public Works Director City of Maple Valley P.O. Box 320 Maple Valley, WA 98038</p>
<p>APPROVED AS TO FORM:</p> <p>_____ Sara Springer, City Attorney</p>	<p>APPROVED AS TO FORM:</p> <p>_____ Christy A. Todd, City Attorney</p>