

Clerk's
Receiving No. 1607
Date: 06/21/11
Reference: C-11-840/R-11-810
City Clerk: Deputy

**INTERLOCAL AGREEMENT
BETWEEN THE CITIES OF MAPLE VALLEY, COVINGTON
AND BLACK DIAMOND FOR JOINT PUBLIC WORKS OPERATIONS AND
COOPERATIVE PURCHASING**

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into between the CITY OF MAPLE VALLEY, a Washington municipal corporation ("Maple Valley"), the CITY OF COVINGTON, a Washington municipal corporation ("Covington"), and the CITY OF BLACK DIAMOND, a Washington municipal corporation ("Black Diamond"), (collectively the "Parties, or Cities" or in the singular "Party or City").

WHEREAS, the Parties are "public agencies" as defined by Chapter 39.34 RCW, and through the provisions of that Chapter are authorized by state law 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, RCW 39.34.030 authorizes an agreement for joint or cooperative action by a public agency upon appropriate legislative action by the governing body of each agency prior to entry into such agreement; and

WHEREAS, the Parties' Public Works and Parks Departments have similar operational needs and can provide savings to taxpayers through contracting for shared services; and

WHEREAS, each Party can realize certain economies from sharing resources and piggybacking onto contracts with the other Parties; and

WHEREAS, each Party has agreed to follow the other Parties' Contracting Procedures for bidding, contracting and purchasing where required by this Agreement; and

WHEREAS, each Party has agreed to compensate the other Parties for expenses incurred when utilizing the procedures offered under this Agreement;

NOW THEREFORE, in consideration of the mutual promises contained herein, it is agreed between the Parties as follows:

1. **Purpose.** It is the purpose of this Agreement to utilize the provisions of state law to enable the Parties' to take advantage of economies of scale in sharing resources, by providing services to the other Parties, by conducting joint operations for public works projects, and by utilizing cooperative purchasing.

2. Definitions.

“Contracting Procedures” means the ordinances, resolutions, and administrative orders adopted by a Party that specify the methods by which that Party purchases goods, equipment and services and the methods by which that Party obtains professional services, advertises for bids and awards contracts.

“Joint Meeting” means the joint annual meeting of the City Councils of Maple Valley, Covington and Black Diamond.

“Lead Agency” is the Party designated as having administrative oversight of the services being provided to other Parties, including the responsibility for tracking expenses, providing invoices, and reconciling costs for services rendered.

“Piggybacking” refers to the process by which a Party utilizes the contract that another Party has entered into with an outside vendor to make purchases or to receive services from that outside vendor.

“Providing Party” means the Party that has received a request to provide services.

“Requesting Party” means the Party that requests services from a Providing Party.

3. Request for Services. The following process shall be followed by the Parties when seeking to engage another Party for joint operations or contracted services under this Agreement (not cooperative purchasing, which is addressed in Section 4, herein):

3.1 Requests for Services. The Requesting Party shall submit a written request (see Attachment 1) to the Providing Party setting forth the requested scope of work, requested duration or frequency of work, the equipment and materials required, the location of the work, the estimated cost of the work and budgeted amount for the work, any additional specifications or standards that must be considered, and a date by which a response is requested. If the Requesting Party is limited in the amount of money it can spend on the request due to a budget appropriation, the Requesting Party must specify that limitation in its request.

3.2 Acceptance of Request for Services. The Providing Party shall respond to the written request for services through a written acceptance or denial (see Attachment 2). Should the Providing Party fail to respond to the Requesting Party by the date specified in the request, the Requesting Party’s request shall expire and be void. An acceptance shall include the agreed upon scope of work, the total estimated direct cost for the work, the estimated indirect cost (all administrative charges and overhead), whether a deposit will be required and if so, for what purpose, and the duration and/or schedule for the work and any specifications or standards that will be applicable. The written acceptance shall

require the signature of the appointed administrator of the Providing Party, the appointed administrator of the Requesting Party, and the signature of each such Party's respective City Manager/City Administrator.

3.2.1 Outside Vendor Contracts. If the Providing Party's services to be rendered are services provided by a contract between the Providing Party and an outside vendor, the Providing Party's contract with the vendor shall reference this Agreement, specify that the vendor agrees to provide services to a Party other than the Providing Party, and add the Requesting Party as an additional insured on the vendor's required insurance policies. The Providing Party shall provide a copy of its contract with the outside vendor to the Requesting Party with its written acceptance to the Requesting Party.

3.3 Providing Party as Lead Agency. The Providing Party shall be the Lead Agency and shall have administrative oversight of the services requested, any advertisement for bids and award of contract, and the accounting for the services. The Lead Agency shall generally incur the cost of the service being performed to the Requesting Party and, in most circumstances, shall be responsible for invoicing the Requesting Party for services rendered.

3.4 Increases to Budgeted Amount. Under no circumstances shall the cost of a Providing Party's services to a Requesting Party exceed the stated budget amount in the request from the Requesting Party. Any costs incurred by the Providing Party in excess of the stated budget amount shall not be invoiced to the Requesting Party until and unless the Providing Party has received a letter from the Requesting Party with approval to increase the budget amount for the service.

3.5 Services that Require Bidding and Contracting. A service that requires an advertisement for bids and an award of contract shall be specified by the Providing Party in its written acceptance. Pursuant to Subsection 3.3, the Providing Party, as Lead Agency, shall be solely responsible for conducting an advertisement for bids and awarding a contract. In advertising for bids and awarding a contract the Providing Party shall follow state law and its adopted local ordinances/rules. The Providing Party may consult with the Requesting Party as to the terms and provisions in a request for bids, but the Requesting Party shall have no role in awarding the contract. The Providing Party assumes sole responsibility for compliance with state law and its adopted local ordinances and rules pertaining to the award of the contract, management of the contract, contract close-out, warranty and required financial guarantees. Any claims by laborers/materialmen/mechanics/suppliers shall be handled by the Providing Party. Resolution of any dispute under the contract awarded by the Providing Party shall be the sole responsibility of the Providing Party. The prosecution or defense of any legal claim involving the contract awarded by the Providing Party shall be the sole responsibility of the Providing Party. The Providing Party may

request contribution or assistance from the Requesting Party in resolving any dispute or in prosecuting or defending any legal claim involving the contract awarded by the Providing Party, but any such contribution or assistance shall be at the sole discretion of the Requesting Party.

3.6 Care and Maintenance of Equipment. The Parties agree that any time a request is made for the use of equipment, the Requesting Party shall be responsible for the proper care, maintenance and security of the equipment until the equipment is returned to the Providing Party. The Requesting Party shall permit the equipment to be used only by properly trained and supervised operators. Any damage to the equipment other than normal wear and tear will be the responsibility of the Party in possession of the equipment at the time the equipment is damaged. The Providing Party may require, at its sole discretion, that only the Providing Party's personnel operate certain equipment. In doing so, the Providing Party shall be deemed an independent contractor, pursuant to Section 12, and the Providing Party's employees shall not be deemed employees of the Requesting Party. The Providing Party's operator shall perform under the general direction and control of the Requesting Party but shall retain full control of the manner and means of using the equipment.

3.7 Right of Entry. The Parties to this Agreement hereby grant and convey to each other the right to enter upon all land in which the Parties have an interest, within or adjacent to the right-of-way of a highway, road or street for the purpose of accomplishing all work or services requested as part of this Agreement.

4. Joint and Cooperative Purchasing.

4.1 Contract Piggybacking. Each Party to this Agreement has adopted its own Contracting Procedures pertaining to purchasing and the award of contracts. A piggybacking Party bears the sole responsibility for conducting its own due diligence to determine whether the non-piggybacking Party has lawfully entered into a contract for purchasing and/or services according to that Party's adopted Contracting Procedures prior to placing any orders, or engaging services from a provider under the non-piggybacking Party's contract. Due diligence includes ascertaining whether the non-piggybacking Party's contract with an outside vendor allows a Party to piggyback.

4.2 Contracting Procedures. Each Party's Contracting Procedures are specified herein as follows:

4.2.1 Maple Valley. Maple Valley's Contracting Procedures are codified at Chapter 2.75 MVMC. Maple Valley's contracting procedures include: (a) a process for utilizing the MRSC Small Works Roster and Consulting Roster for Professional, Engineering and Architectural Services, and establishing a Limited Public Works Process

pursuant to Resolution R-08-628, as amended by R-09-698; (b) a process for public works project closeout pursuant to Resolution R-09-720; (c) administrative order A-09-01 establishing procedures for formal competitive bid solicitation and bid award for public works contracts over \$300,000 and purchases over \$35,000; (d) administrative order A-09-02 establishing a process for obtaining informal, competitive quotes; (e) administrative order A-10-04 establishing retainage release requirements for public works projects; and (f) administrative order A-10-05 establishing a process for delegation of contract signature authority to Department Directors. Maple Valley's Contracting Procedures are attached hereto and incorporated herein as Attachment 3.

4.2.2 Covington. Covington's Purchasing Policies and Procedures are adopted by Resolution No. 10-14 effective June 8, 2010. Covington's Purchasing Policies and Procedures are attached hereto and incorporated herein as Attachment 4.

4.2.3 Black Diamond. Black Diamond's Procedures are established by Ordinance 07-828. Black Diamond's Procedures are attached hereto and incorporated herein as Attachment 5.

4.3 Piggybacking Party's Responsibilities. If the piggybacking Party decides to utilize the non-piggybacking Party's contract to purchase supplies, equipment, or services, the piggybacking Party bears the sole responsibility for observing the terms of the non-piggybacking Party's contract and assumes any liability under the terms of the contract between the non-piggybacking Party and the vendor/service provider pertaining to the supplies, equipment or services it obtains under that contract, thereby stepping into the shoes of the non-piggybacking Party for all purposes for which the piggybacking Party is utilizing the non-piggybacking Party's contract.

4.4 Piggybacking Not Authorized. This Agreement does not authorize any Party to piggyback onto any Party's Intergovernmental Agreement for State Purchasing Cooperative with the State of Washington, Department of General Administration.

5. Administration.

5.1 Joint Administrative Board. The Parties shall each appoint a representative to administer the terms of this Agreement, and the appointed administrators shall comprise the Joint Administrative Board. The appointed administrators, which may be amended from time to time with notice to the other Parties are:

For Maple Valley:
Steve Clark, Public Works Director

22035 SE Wax Road
P.O. Box 320
Maple Valley, WA 98038
(425) 413-8800

With a copy to:
David W. Johnston, City Manager

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

With a copy to:
Derek Matheson, City Manager

For Black Diamond:
Seth Boettcher, Public Works Director
P.O. Box 599
24301 Roberts Dr
Black Diamond, WA 98010
(360) 886-2560

With a copy to:
Rebecca Olness, Mayor

5.1.1 Notices. Notices to be provided pursuant to this Agreement shall be provided in writing to the persons indicated herein, at the addresses indicated herein. Notices shall be deemed delivered three (3) days after placement of the notice in the U.S. Mail, first class postage pre-paid. Courtesy copies of notices may be provided via email transmission but shall not constitute delivery of written notice as set forth herein.

5.2 Coordination. All Parties shall participate in regularly scheduled meetings to discuss the services being provided under this Agreement and any issues that arise. Meeting attendees shall include each Party's appointed administrator or his/her designee(s), as well as any staff who administer service requests pursuant to this Agreement. Summaries of these meetings shall be provided to the administrator for each Party. An annual report shall be developed by the Parties and considered at the Joint Meeting to assess the effectiveness of this Agreement.

5.3 Legislative Updates. Each Party shall have discretion as to the frequency of communications with its City Council regarding services performed under this Agreement.

5.4 **Audit of Lead Agency.** A Lead Agency shall be subject to audit by any other Party to this Agreement upon five (5) days advance notice. A Lead Agency shall make its records available to any other Party for any service, project, cooperative purchase, or joint undertaking for which it provided services as Lead Agency. A Lead Agency shall retain all records pertaining to any service, project, cooperative purchase, or joint undertaking for a minimum period of six (6) years. Such records shall include, but are not limited to: bid documents, contracts, change orders, work orders, contract close out records, labor timekeeping records, and financial records.

6. **Term of Agreement.** This Agreement shall become effective as of the date this Agreement is approved by the legislative body of at least two Parties and subsequently executed by those Parties according to each of those Parties' adopted policies and procedures. The remaining Party may enter into this Agreement at any time upon approval of their legislative body and subsequently executed according to that Party's policies and procedures and pursuant to subsection 13.10. Unless terminated by all Parties pursuant to the terms of this Agreement, this Agreement shall remain in full force and effect until December 31, 2015. This Agreement may be extended by written agreement of the Parties subject to the approval of such extension by each Party's legislative body.

7. **Payment.** The Parties shall pay for services provided pursuant to the following provisions:

7.1 **Payments for Materials and Services.** Each Requesting Party shall pay for actual direct and related indirect costs, including any overhead and administrative charges, for products/materials/equipment and services purchased or provided by the Providing Party. All costs shall be part of the written acceptance pursuant to Section 3. Any indirect costs may be waived by the Providing Party at its discretion.

7.2 **Billing Statement.** The Providing Party shall submit a monthly invoice to the Requesting Party(ies) on a form agreed upon by the appointed administrators and shall contain the amount of products/materials/equipment and/or services purchased during the preceding month. Payment shall be made by the Requesting Party each month within thirty (30) days of receipt of the invoice.

7.3 **Disputes.** In the event there is a dispute regarding the amount of money owed among the Parties, the appointed administrators of the Parties in dispute shall make every effort to resolve such dispute by mutual agreement. No dispute shall be resolved by majority vote. In the event there is no mutually agreed resolution to the dispute, the appointed administrators shall forward the dispute to each Party's City Manager/City Administrator/Mayor for resolution. In the event there is no resolution after review by the Parties' City Managers/City Administrator/Mayor, the Parties shall seek mediation through a mutually agreed

mediation service, and each Party shall bear its own costs for mediation. If mediation is unsuccessful, any Party may pursue any legal remedy available from a court of competent jurisdiction. Any dispute that has gone to mediation and mediation was unsuccessful in resolving the dispute shall be grounds for any Party to terminate this Agreement for material breach.

7.4 Reconciliation. Within thirty (30) days of submitting the last invoice for a service rendered under this Agreement, the Parties shall reconcile their respective accounts and provide a copy of the reconciliation to the other Parties. If the Parties' reconciliations do not match, the Parties shall schedule a meeting within fourteen (14) days of receipt of the reconciliation statement to resolve the discrepancy(ies). If the discrepancy(ies) cannot be resolved, the Parties shall utilize the dispute process set forth in Subsection 7.3. Final payment and reconciliation of all accounts for all services rendered under this Agreement shall occur within ninety (90) days of the effective date of termination of this Agreement; or, no later than ninety (90) days after any service was rendered.

8. Ownership of Property; Financing.

8.1 Acquisition of Property. Any property owned by a given Party at the time of execution of this Agreement shall remain the property of that Party. Any property jointly acquired by Parties under this Agreement shall require a separate, written agreement to specify the terms under which said property will be acquired, the Party responsible for storage, maintenance, and insurance of said property, and all other necessary terms including disposition of said property.

8.2 Financing. Should the Parties desire to jointly finance acquisition of property, or to jointly finance a public works project, the Parties collectively, or individually, are authorized under this Agreement to establish one or more funds to be titled, "Operating fund of Joint Board for Tri-City cooperative purchasing and contracting for _____ [specify project/purchase]."

9. Termination.

9.1 Termination by Notice. Any Party may terminate its participation in this Agreement by providing the other Parties with sixty (60) days advance written notice of the effective date of such termination. The Party providing such notice shall remain responsible for any costs incurred under this Agreement, including any costs to which the Party is contractually obligated under any joint undertaking that extends beyond the sixty (60) day termination date provided in the notice of termination.

9.2 Termination by Mutual Written Agreement. This Agreement may be terminated in its entirety at any time by written agreement that is executed by all of the Parties.

9.3 Termination for Breach. Any Party may terminate its participation in this Agreement with fourteen (14) days advance written notice to the other Parties for material breach of the terms of this Agreement, provided that disputes regarding billing statements shall be handled pursuant to Subsection 7.3 and shall not be deemed a breach of this Agreement except as set forth in Subsection 7.3.

10. Indemnification and Hold Harmless.

10.1 Covington. Covington agrees to defend, indemnify, and hold harmless Maple Valley and Black Diamond and each of their respective employees, officials, agents, and volunteers from any and all losses, claims, liabilities, lawsuits, or legal judgments arising from or caused by any negligent or tortious actions or inactions, and any and all losses, claims, liabilities, lawsuits, or legal judgments arising from any willful or knowing violation of law by Covington or any of its employees, officials, agents, or volunteers while performing its duties and obligations under 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, 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 Agreement is not enforceable. This obligation shall not include such claims, costs, damages or expenses which are caused by the sole negligence of Maple Valley or Black Diamond or their officers, agents, employees, assigns, contractors, licensees, invitees, or employees.

10.2 Maple Valley. Maple Valley agrees to defend, indemnify, and hold harmless Covington and Black Diamond and each of their respective employees, officials, agents, and volunteers from any and all losses, damages, claims, liabilities, lawsuits, or legal judgments arising from or caused by any negligent or tortious actions or inactions, and any and all losses, claims, liabilities, lawsuits, or legal judgments arising from any willful or knowing violation of law by Maple Valley or any of its employees, officials, agents, or volunteers while performing its duties and obligations under 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, related to Maple Valley's negligence, or tortuous 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. This obligation shall not include such claims, costs, damages or expenses which are caused by the sole negligence of

Covington or Black Diamond or their officers, agents, employees, assigns, contractors, licensees, invitees, or employees.

10.3 Black Diamond. Black Diamond agrees to defend, indemnify, and hold harmless Covington and Maple Valley and each of their respective employees, officials, agents, and volunteers from any and all losses, damages, claims, liabilities, lawsuits, or legal judgments arising from or caused by any negligent or tortious actions or inactions, and any and all losses, claims, liabilities, lawsuits, or legal judgments arising from any willful or knowing violation of law by Black Diamond or any of its employees, officials, agents, or volunteers, while performing its duties and obligations under 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, related to Black Diamond's negligence, or tortuous actions or inactions shall be paid by Black Diamond 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. This obligation shall not include such claims, costs, damages or expenses which are caused by the sole negligence of Maple Valley or Covington or their officers, agents, employees, assigns, contractors, licensees, invitees, or employees.

10.4 Usage of Equipment. When using Providing Party's equipment only, the Requesting Party will protect, save and hold harmless and indemnify the Providing Party and its officers, agents, and employees from all claims, actions, damages, or expenses of any nature whatsoever by reasons of the acts or omissions of the Requesting Party or its assigns, agents, contractors, licensees, invitees, employees, or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement arising solely out of the Requesting Party's use of the Providing Party's equipment. In such cases, the Requesting Party further agrees to defend the Providing Party and its officers, agents, employees, assigns, agents, contractors, licensees, invitees, and employees in any litigation, including payment of any costs or attorney fees for any claims or action commenced thereon arising out of or in connection with the acts or activities authorized by this Agreement. This obligation shall not include such claims, costs, damages or expenses which are caused by the sole negligence of the Providing Party or its officers, agents, employees, assigns, contractors, licensees, invitees, or employees.

10.5 Usage of Both Equipment and Labor. When the Providing Party provides both equipment and labor, the Providing Party will protect save and hold harmless and indemnify the Requesting Party and its officers, agents, and employees from all claims, actions, damages, or expenses of any nature whatsoever by reasons of the acts or omissions of the Providing Party or its officers, agents, employees, assigns, contractors, licensees, invitees, or employees arising out of or in connection with any acts or activities authorized by this

Agreement arising out of the use of both the Providing Party's equipment and labor. In such cases, the Providing Party further agrees to defend the Requesting Party and its officers, agents, employees, assigns, agents, contractors, licensees, invitees, and employees in any litigation, including payment of any costs or attorney fees for any claims or action commenced thereon arising out of or in connection with the acts or activities authorized by this Agreement. This obligation shall not include such claims, costs, damages or expenses which are caused by the sole negligence of the Requesting Party or its officers, agents, employees, assigns, contractors, licensees, invitees, or employees.

10.6 Concurrent Negligence. If the claims or damages are caused by or result from the concurrent negligence of the Providing Party and their officers, agents, employees, assigns, contractors, licensees or invitees and the Requesting Party(ies), its officers, agents, employees, assigns, contractors, licensees, or invitees and involves those actions covered by RCW 4.24.115, both the Providing Party and the Requesting Party shall be liable only to the proportional extent of their respective negligence.

10.7 Waiver of Workers Compensation Immunity. 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.

11. Insurance. Maple Valley, Black Diamond and Covington are members of Washington Cities Insurance Authority Risk Pool (WCIA), and, consistent with policies established by WCIA, Maple Valley, Black Diamond and Covington are insured and agree to maintain for the duration of the Agreement insurance coverage as required herein, 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.

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

11.2 Minimum Scope of Insurance. Each Party shall obtain insurance of the types described below:

11.2.1 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.

11.2.2 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.

11.2.3 Workers' compensation and employer's liability insurance in sufficient amounts as required by the industrial insurance laws of the State of Washington.

11.2.4 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.

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

11.3.1 Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

11.3.2 Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$3,000,000 general aggregate.

11.3.3 Professional Liability errors and omission insurance shall be written with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

11.4 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:

11.4.1 Covington's insurance coverage shall be primary insurance as respect to Maple Valley and Black Diamond. Any insurance, self-insurance, or insurance pool coverage maintained by Maple Valley and Black Diamond shall be excess of Covington's insurance and shall not contribute with it. Maple Valley's insurance coverage shall be primary insurance as respect to Covington and Black Diamond. Any insurance, self-insurance or insurance pool coverage maintained by Covington and Black Diamond shall in excess of Maple Valley's insurance and shall not contribute with it. Black Diamond's insurance coverage shall be primary insurance as respect to Covington and Maple Valley. Any insurance, self-insurance or insurance pool coverage maintained by Covington and Maple Valley shall in excess of Black Diamond's insurance and shall not contribute with it.

11.4.2 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.

11.5 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.

12. Independent Service Provider.

12.1. Notwithstanding Section 3.6 herein, the Parties intend that an independent contractor relationship is created by this Agreement. To the extent that any Party exercises control and direction over the work of any other Party, such control and directions will be for purposes of achieving the results specified in the Acceptance of Services letter according to Section 3.2 herein. No agent, employee, servant or representative of a Party shall be deemed to be an employee, agent, servant or representative of another Party for any purpose, and the employees of a Party are not entitled to any of the benefits that another Party provides for its employees. Each Party shall be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives, performed within the authorized scope of its agents, employees, servants, subcontractors or representatives' duties during the performance of this Agreement.

12.2 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 Parties and shall be subject to the other Parties' general rights of inspection and review to secure the satisfactory completion thereof.

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

13. Miscellaneous.

13.1 Non-Waiver of Breach. The failure of any 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.

13.2 Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of

Washington. Subject to Subsection 7.3, 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.

13.3 Assignment. This Agreement is not assignable by any Party, in whole or in part.

13.4 Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless made in writing and approved by the legislative body of each city.

13.5 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.

13.5.1 Nondiscrimination in Employment. In the performance of this Agreement, no Party will discriminate against any employee or applicant for employment on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age or other basis prohibited by state or federal law; unless based upon a bona fide occupational qualification. Each Party shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

13.5.2. Nondiscrimination in Services. No Party will discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age or other basis prohibited by state or federal law.

13.6 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.

13.7 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.

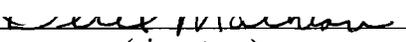
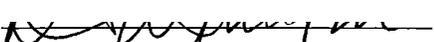
13.8 Interpretation. The legal presumption that an ambiguous term of this Agreement should be interpreted against the Party who prepared the Agreement shall not apply.

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

13.10 Counterparts. This Agreement may be executed in multiple counterparts, any of which shall constitute an agreement by and among the Parties who have executed this Agreement, provided that each Party shall transmit to the attention of the Covington City Clerk an original, executed signature page of this Agreement. The Covington City Clerk shall cause a copy of this Agreement and a copy of each executed signature page of each party to be posted on the Covington City website pursuant to RCW 39.34.040.

Signatures appear on next page

IN WITNESS WHEREOF, the parties below execute this Agreement, which shall become effective pursuant to the terms of Section 5, herein.

COVINGTON: CITY OF COVINGTON: By: <u></u> (signature) Print Name: <u>Derek M. Matheson</u> Its <u>City Manager</u> (Title) DATE: <u>6/15/11</u>	MAPLE VALLEY: CITY OF MAPLE VALLEY: By: <u></u> Print Name: <u>David W. Johnston</u> Its <u>City Manager</u> DATE: <u>6/20/2011</u>
APPROVED AS TO FORM: _____ Sara Springer, City Attorney	APPROVED AS TO FORM: _____ Christy A. Todd, City Attorney

<p>BLACK DIAMOND:</p> <p>CITY OF BLACK DIAMOND:</p> <p>By: _____ (signature)</p> <p>Print Name: <u>Rebecca Olness</u></p> <p>_____ Its <u>Mayor</u> (Title)</p> <p>DATE: _____</p>
<p>APPROVED AS TO FORM:</p> <p>_____ Chris Bacha, City Attorney</p>

DATE

NAME

ADDRESS

CITY STATE ZIP

RE: Request for Services

Dear ILA Administrator:

As per Section 3.1 of the Interlocal Agreement between the Cities of Maple Valley, Black Diamond and Covington the City of _____ requests the City of _____ provide _____ services.

Scope of Service Requested:

- Task/Project summary including frequency and requested start date of task.
- Specifications or standards of requestor for task/project.
- Equipment and materials requested.
- Equipment and materials provided by requestor.
- Attachments (list and map of location).

Financial Considerations:

- Requestors budget not to exceed \$ _____ for task.
- Request for direct and indirect cost of project or task.

Please provide the estimated cost for the above task/project to include the scope of services and financial considerations no later than [DATE]. Thank you for your consideration.

Sincerely,

ILA Administrator

DATE

NAME

ADDRESS

CITY STATE ZIP

RE: Acceptance of Request for Service

Dear ILA Administrator:

As per Section 3.1 of the Interlocal Agreement between the Cities of Maple Valley, Black Diamond and Covington the City of _____ accepts the City of _____ request to provide _____ services.

Agreed to Scope of Service:

- Task/Project summary including frequency and requested start date of task.
- Specifications or standards of requestor for task/project.
- Equipment and materials requested.
- Equipment and materials provided by requestor.
- Attachments (list and map of location).

Financial Considerations:

DESCRIPTION	AMOUNT
Budget not to Exceed for Task	\$
Direct Cost of Task/Project	\$
Direct Cost of Equipment	\$
Direct Cost of Materials	\$
Direct Cost of Personnel	\$
Indirect Costs	\$
Total Cost	\$

The City of _____ will contact you via phone to coordinate the scheduling of Tasks/Project within the next five business days. Thank you for your request.

Sincerely,

ILA Administrator

**FIRST AMENDED INTERLOCAL AGREEMENT
BETWEEN THE CITIES OF MAPLE VALLEY, COVINGTON
AND BLACK DIAMOND FOR JOINT PUBLIC WORKS OPERATIONS AND
COOPERATIVE PURCHASING**

THIS INTERLOCAL AGREEMENT (“Agreement”) is entered into between the CITY OF MAPLE VALLEY, a Washington municipal corporation (“Maple Valley”), the CITY OF COVINGTON, a Washington municipal corporation (“Covington”), and the CITY OF BLACK DIAMOND, a Washington municipal corporation (“Black Diamond”), (collectively the “Parties, or Cities” or in the singular “Party or City”).

WHEREAS, the Parties are “public agencies” as defined by Chapter 39.34 RCW, and through the provisions of that Chapter are authorized by state law 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, RCW 39.34.030 authorizes an agreement for joint or cooperative action by a public agency upon appropriate legislative action by the governing body of each agency prior to entry into such agreement; and

WHEREAS, the Parties’ Public Works and Parks Departments have similar operational needs and can provide savings to taxpayers through contracting for shared services; and

WHEREAS, each Party can realize certain economies from sharing resources and piggybacking onto contracts with the other Parties; and

WHEREAS, each Party has agreed to follow the other Parties’ Contracting Procedures for bidding, contracting and purchasing where required by this Agreement; and

WHEREAS, each Party has agreed to compensate the other Parties for expenses incurred when utilizing the procedures offered under this Agreement;

NOW THEREFORE, in consideration of the mutual promises contained herein, it is agreed between the Parties as follows:

1. Purpose. It is the purpose of this Agreement to utilize the provisions of state law to enable the Parties’ to take advantage of economies of scale in sharing resources, by providing services to the other Parties, by conducting joint operations for public works projects, and by utilizing cooperative purchasing.

2. Definitions.

“Contracting Procedures” means the ordinances, resolutions, and administrative orders adopted by a Party that specify the methods by which that Party purchases goods, equipment and services and the methods by which that Party obtains professional services, advertises for bids and awards contracts.

“Joint Meeting” means the joint annual meeting of the City Councils of Maple Valley, Covington and Black Diamond.

“Lead Agency” is the Party designated as having administrative oversight of the services being provided to other Parties, including the responsibility for tracking expenses, providing invoices, and reconciling costs for services rendered.

“Piggybacking” refers to the process by which a Party utilizes the contract that another Party has entered into with an outside vendor to make purchases or to receive services from that outside vendor.

“Providing Party” means the Party that has received a request to provide services.

“Requesting Party” means the Party that requests services from a Providing Party.

3. Request for Services. The following process shall be followed by the Parties when seeking to engage another Party for joint operations or contracted services under this Agreement (not cooperative purchasing, which is addressed in Section 4, herein):

3.1 Requests for Services. The Requesting Party shall submit a written request (see Attachment 1) to the Providing Party setting forth the requested scope of work, requested duration or frequency of work, the equipment and materials required, the location of the work, the estimated cost of the work and budgeted amount for the work, any additional specifications or standards that must be considered, and a date by which a response is requested. If the Requesting Party is limited in the amount of money it can spend on the request due to a budget appropriation, the Requesting Party must specify that limitation in its request.

3.2 Acceptance of Request for Services. The Providing Party shall respond to the written request for services through a written acceptance or denial (see Attachment 2). Should the Providing Party fail to respond to the Requesting Party by the date specified in the request, the Requesting Party’s request shall expire and be void. An acceptance shall include the agreed upon scope of work, the total estimated direct cost for the work, the estimated indirect cost (all administrative charges and overhead), whether a deposit will be required and if so, for what purpose, and the duration and/or schedule for the work and any specifications or standards that will be applicable. The written acceptance shall

require the signature of the appointed administrator of the Providing Party, the appointed administrator of the Requesting Party, and the signature of each such Party's respective City Manager/City Administrator.

3.2.1 Outside Vendor Contracts. If the Providing Party's services to be rendered are services provided by a contract between the Providing Party and an outside vendor, the Providing Party's contract with the vendor shall reference this Agreement, specify that the vendor agrees to provide services to a Party other than the Providing Party, and add the Requesting Party as an additional insured on the vendor's required insurance policies. The Providing Party shall provide a copy of its contract with the outside vendor to the Requesting Party with its written acceptance to the Requesting Party.

3.3 Providing Party as Lead Agency. The Providing Party shall be the Lead Agency and shall have administrative oversight of the services requested, any advertisement for bids and award of contract, and the accounting for the services. The Lead Agency shall generally incur the cost of the service being performed to the Requesting Party and, in most circumstances, shall be responsible for invoicing the Requesting Party for services rendered.

3.4 Increases to Budgeted Amount. Under no circumstances shall the cost of a Providing Party's services to a Requesting Party exceed the stated budget amount in the request from the Requesting Party. Any costs incurred by the Providing Party in excess of the stated budget amount shall not be invoiced to the Requesting Party until and unless the Providing Party has received a letter from the Requesting Party with approval to increase the budget amount for the service.

3.5 Services that Require Bidding and Contracting. A service that requires an advertisement for bids and an award of contract shall be specified by the Providing Party in its written acceptance. Pursuant to Subsection 3.3, the Providing Party, as Lead Agency, shall be solely responsible for conducting an advertisement for bids and awarding a contract. In advertising for bids and awarding a contract the Providing Party shall follow state law and its adopted local ordinances/rules. The Providing Party may consult with the Requesting Party as to the terms and provisions in a request for bids, but the Requesting Party shall have no role in awarding the contract. The Providing Party assumes sole responsibility for compliance with state law and its adopted local ordinances and rules pertaining to the award of the contract, management of the contract, contract close-out, warranty and required financial guarantees. Any claims by laborers/materialmen/mechanics/suppliers shall be handled by the Providing Party. Resolution of any dispute under the contract awarded by the Providing Party shall be the sole responsibility of the Providing Party. The prosecution or defense of any legal claim involving the contract awarded by the Providing Party shall be the sole responsibility of the Providing Party. The Providing Party may

request contribution or assistance from the Requesting Party in resolving any dispute or in prosecuting or defending any legal claim involving the contract awarded by the Providing Party, but any such contribution or assistance shall be at the sole discretion of the Requesting Party.

3.6 Care and Maintenance of Equipment. The Parties agree that any time a request is made for the use of equipment, the Requesting Party shall be responsible for the proper care, maintenance and security of the equipment until the equipment is returned to the Providing Party. The Requesting Party shall permit the equipment to be used only by properly trained and supervised operators. Any damage to the equipment other than normal wear and tear will be the responsibility of the Party in possession of the equipment at the time the equipment is damaged. The Providing Party may require, at its sole discretion, that only the Providing Party's personnel operate certain equipment. In doing so, the Providing Party shall be deemed an independent contractor, pursuant to Section 12, and the Providing Party's employees shall not be deemed employees of the Requesting Party. The Providing Party's operator shall perform under the general direction and control of the Requesting Party but shall retain full control of the manner and means of use and operation of the equipment. The Providing Party warrants that the Providing Party's operator possesses all of the necessary training, skills and abilities to safely and properly use and operate any such equipment. Notwithstanding the fact that the Requesting Party may direct and control the work, the operator shall not for any purposes be considered a loaned servant to the Requesting party.

3.7 Right of Entry. The Parties to this Agreement hereby grant and convey to each other the right to enter upon all land in which the Parties have an interest, within or adjacent to the right-of-way of a highway, road or street for the purpose of accomplishing all work or services requested as part of this Agreement.

4. Joint and Cooperative Purchasing.

4.1 Contract Piggybacking. Each Party to this Agreement has adopted its own Contracting Procedures pertaining to purchasing and the award of contracts. A piggybacking Party bears the sole responsibility for conducting its own due diligence to determine whether the non-piggybacking Party has lawfully entered into a contract for purchasing and/or services according to that Party's adopted Contracting Procedures prior to placing any orders, or engaging services from a provider under the non-piggybacking Party's contract. Due diligence includes ascertaining whether the non-piggybacking Party's contract with an outside vendor allows a Party to piggyback.

4.2 Contracting Procedures. Each Party's Contracting Procedures are specified herein as follows:

4.2.1 Maple Valley. Maple Valley's Contracting Procedures are codified at Chapter 2.75 MVMC. Maple Valley's contracting procedures include: (a) a process for utilizing the MRSC Small Works Roster and Consulting Roster for Professional, Engineering and Architectural Services, and establishing a Limited Public Works Process pursuant to Resolution R-08-628, as amended by R-09-698; (b) a process for public works project closeout pursuant to Resolution R-09-720; (c) administrative order A-09-01 establishing procedures for formal competitive bid solicitation and bid award for public works contracts over \$300,000 and purchases over \$35,000; (d) administrative order A-09-02 establishing a process for obtaining informal, competitive quotes; (e) administrative order A-10-04 establishing retainage release requirements for public works projects; and (f) administrative order A-10-05 establishing a process for delegation of contract signature authority to Department Directors. Maple Valley's Contracting Procedures are attached hereto and incorporated herein as Attachment 3.

4.2.2 Covington. Covington's Purchasing Policies and Procedures are adopted by Resolution No. 10-14 effective June 8, 2010. Covington's Purchasing Policies and Procedures are attached hereto and incorporated herein as Attachment 4.

4.2.3 Black Diamond. Black Diamond's Procedures are established by Ordinance 07-828. Black Diamond's Procedures are attached hereto and incorporated herein as Attachment 5.

4.3 Piggybacking Party's Responsibilities. If the piggybacking Party decides to utilize the non-piggybacking Party's contract to purchase supplies, equipment, or services, the piggybacking Party bears the sole responsibility for observing the terms of the non-piggybacking Party's contract and assumes any liability under the terms of the contract between the non-piggybacking Party and the vendor/service provider pertaining to the supplies, equipment or services it obtains under that contract, thereby stepping into the shoes of the non-piggybacking Party for all purposes for which the piggybacking Party is utilizing the non-piggybacking Party's contract.

4.4 Piggybacking Not Authorized. This Agreement does not authorize any Party to piggyback onto any Party's Intergovernmental Agreement for State Purchasing Cooperative with the State of Washington, Department of General Administration.

5. Administration.

5.1 Joint Administrative Board. The Parties shall each appoint a representative to administer the terms of this Agreement, and the appointed administrators shall comprise the Joint Administrative Board. The appointed

administrators, which may be amended from time to time with notice to the other Parties are:

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

With a copy to:
David W. Johnston, City Manager

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

With a copy to:
Derek Matheson, City Manager

For Black Diamond:
Seth Boettcher, Public Works Director
P.O. Box 599
24301 Roberts Dr
Black Diamond, WA 98010
(360) 886-2560

With a copy to:
Rebecca Olness, Mayor

5.1.1 Notices. Notices to be provided pursuant to this Agreement shall be provided in writing to the persons indicated herein, at the addresses indicated herein. Notices shall be deemed delivered three (3) days after placement of the notice in the U.S. Mail, first class postage pre-paid. Courtesy copies of notices may be provided via email transmission but shall not constitute delivery of written notice as set forth herein.

5.2 Coordination. All Parties shall participate in regularly scheduled meetings to discuss the services being provided under this Agreement and any issues that arise. Meeting attendees shall include each Party's appointed administrator or his/her designee(s), as well as any staff who administer service requests pursuant to this Agreement. Summaries of these meetings shall be provided to the administrator for each Party. An annual report shall be developed

by the Parties and considered at the Joint Meeting to assess the effectiveness of this Agreement.

5.3 Legislative Updates. Each Party shall have discretion as to the frequency of communications with its City Council regarding services performed under this Agreement.

5.4 Audit of Lead Agency. A Lead Agency shall be subject to audit by any other Party to this Agreement upon five (5) days advance notice. A Lead Agency shall make its records available to any other Party for any service, project, cooperative purchase, or joint undertaking for which it provided services as Lead Agency. A Lead Agency shall retain all records pertaining to any service, project, cooperative purchase, or joint undertaking for a minimum period of six (6) years. Such records shall include, but are not limited to: bid documents, contracts, change orders, work orders, contract close out records, labor timekeeping records, and financial records.

6. **Term of Agreement.** This Agreement shall become effective as of the date this Agreement is approved by the legislative body of at least two Parties and subsequently executed by those Parties according to each of those Parties' adopted policies and procedures. The remaining Party may enter into this Agreement at any time upon approval of their legislative body and subsequently executed according to that Party's policies and procedures and pursuant to subsection 13.10. Unless terminated by all Parties pursuant to the terms of this Agreement, this Agreement shall remain in full force and effect until December 31, 2015. This Agreement may be extended by written agreement of the Parties subject to the approval of such extension by each Party's legislative body.

7. **Payment.** The Parties shall pay for services provided pursuant to the following provisions:

7.1 Payments for Materials and Services. Each Requesting Party shall pay for actual direct and related indirect costs, including any overhead and administrative charges, for products/materials/equipment and services purchased or provided by the Providing Party. All costs shall be part of the written acceptance pursuant to Section 3. Any indirect costs may be waived by the Providing Party at its discretion.

7.2 Billing Statement. The Providing Party shall submit a monthly invoice to the Requesting Party(ies) on a form agreed upon by the appointed administrators and shall contain the amount of products/materials/equipment and/or services purchased during the preceding month. Payment shall be made by the Requesting Party each month within thirty (30) days of receipt of the invoice.

7.3 Disputes. In the event there is a dispute regarding the amount of

money owed among the Parties, the appointed administrators of the Parties in dispute shall make every effort to resolve such dispute by mutual agreement. No dispute shall be resolved by majority vote. In the event there is no mutually agreed resolution to the dispute, the appointed administrators shall forward the dispute to each Party's City Manager/City Administrator/Mayor for resolution. In the event there is no resolution after review by the Parties' City Managers/City Administrator/Mayor, the Parties shall seek mediation through a mutually agreed mediation service, and each Party shall bear its own costs for mediation. If mediation is unsuccessful, any Party may pursue any legal remedy available from a court of competent jurisdiction. Any dispute that has gone to mediation and mediation was unsuccessful in resolving the dispute shall be grounds for any Party to terminate this Agreement for material breach.

7.4 Reconciliation. Within thirty (30) days of submitting the last invoice for a service rendered under this Agreement, the Parties shall reconcile their respective accounts and provide a copy of the reconciliation to the other Parties. If the Parties' reconciliations do not match, the Parties shall schedule a meeting within fourteen (14) days of receipt of the reconciliation statement to resolve the discrepancy(ies). If the discrepancy(ies) cannot be resolved, the Parties shall utilize the dispute process set forth in Subsection 7.3. Final payment and reconciliation of all accounts for all services rendered under this Agreement shall occur within ninety (90) days of the effective date of termination of this Agreement; or, no later than ninety (90) days after any service was rendered.

8. Ownership of Property; Financing.

8.1 Acquisition of Property. Any property owned by a given Party at the time of execution of this Agreement shall remain the property of that Party. Any property jointly acquired by Parties under this Agreement shall require a separate, written agreement to specify the terms under which said property will be acquired, the Party responsible for storage, maintenance, and insurance of said property, and all other necessary terms including disposition of said property.

8.2 Financing. Should the Parties desire to jointly finance acquisition of property, or to jointly finance a public works project, the Parties collectively, or individually, are authorized under this Agreement to establish one or more funds to be titled, "Operating fund of Joint Board for Tri-City cooperative purchasing and contracting for _____ [specify project/purchase]."

9. Termination.

9.1 Termination by Notice. Any Party may terminate its participation in this Agreement by providing the other Parties with sixty (60) days advance written notice of the effective date of such termination. The Party providing such notice shall remain responsible for any costs incurred under this Agreement, including any costs to which the Party is contractually obligated under any joint

undertaking that extends beyond the sixty (60) day termination date provided in the notice of termination.

9.2 Termination by Mutual Written Agreement. This Agreement may be terminated in its entirety at any time by written agreement that is executed by all of the Parties.

9.3 Termination for Breach. Any Party may terminate its participation in this Agreement with fourteen (14) days advance written notice to the other Parties for material breach of the terms of this Agreement, provided that disputes regarding billing statements shall be handled pursuant to Subsection 7.3 and shall not be deemed a breach of this Agreement except as set forth in Subsection 7.3.

10. Indemnification and Hold Harmless.

10.1 Each Party hereto (the “Indemnifying Party”) shall hold harmless and indemnify each other Party hereto, its elected officials, officers, employees, and agents (collectively the “Indemnitees”) from and against any and all suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney’s fees) that result from or arise out of the acts or omissions of the indemnifying party, its elected officials, officers, employees, and agents in connection with or incidental to the performance or non-performance of services, duties, and obligations under this Agreement.

In the event the acts or omissions of the officials, officers, agents, and/or employees of a Party in connection with or incidental to the performance or non-performance of services, duties, or obligations under this Agreement are the subject of any liability claims by a third party, each Party shall each be liable for its proportionate concurrent negligence in any resulting suits, actions, claims, liability, damages, judgments, costs and expenses and for their own attorney’s fees.

Nothing contained in this section or this Agreement shall be construed to create a right in any third party to indemnification.

The provisions of this section shall survive any termination or expiration of this Agreement.

10.2 Waiver of Workers Compensation Immunity. 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.

11. Insurance. Maple Valley, Black Diamond, and Covington are members of an insurance risk pool, and, consistent with the policies established by each Party's respective risk pool, Maple Valley, Black Diamond, and Covington are insured and agree 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. Should a Requesting Party require specific insurance coverage for a specific service, the Requesting Party shall indicate any additional insurance specifications or standards in their written request for services pursuant to Section 3.1 herein.

12. Independent Service Provider.

12.1 Notwithstanding Section 3.6 herein, the Parties intend that an independent contractor relationship is created by this Agreement. In providing services under this Agreement, each Party is an independent contractor and neither it nor its officers, nor its agents nor its employees or vendors, are employees of the other Party for any purpose, including responsibility for any federal or state tax, industrial insurance, or Social Security liability. Neither shall the provision of services under this Agreement give rise to any claim of career service or civil service rights, which may accrue to an employee of the other Party under any applicable law, rule, or regulation. Nothing in this Agreement is intended to create an interest in or give a benefit to third persons not signing as a party to this Agreement. As an independent contractor, each Party shall be responsible for the reporting and payment of all applicable local, state, and federal taxes.

12.2 To the extent that any Party exercises control and direction over the work of any other Party, such control and directions will be for purposes of achieving the results specified in the Acceptance of Services letter according to Section 3.2 herein. No agent, employee, servant or representative of a Party shall be deemed to be an employee, agent, servant or representative of another Party for any purpose, and the employees of a Party are not entitled to any of the benefits that another Party provides for its employees. Each Party shall be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives, performed within the authorized scope of its agents, employees, servants, subcontractors or representatives' duties during the performance of this Agreement.

12.3 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 Parties and shall be

subject to the other Parties' general rights of inspection and review to secure the satisfactory completion thereof.

13. Miscellaneous.

13.1 Non-Waiver of Breach. The failure of any 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.

13.2 Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Subject to Subsection 7.3, 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.

13.3 Assignment. This Agreement is not assignable by any Party, in whole or in part.

13.4 Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless made in writing and approved by the legislative body of each city.

13.5 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.

13.5.1 Nondiscrimination in Employment. In the performance of this Agreement, no Party will discriminate against any employee or applicant for employment on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age or other basis prohibited by state or federal law; unless based upon a bona fide occupational qualification. Each Party shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

13.5.2. Nondiscrimination in Services. No Party will discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, religion, creed, color, national origin,

sex, marital status, disability, sexual orientation, age or other basis prohibited by state or federal law.

13.6 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.

13.7 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.

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

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

13.10 Counterparts. This Agreement may be executed in multiple counterparts, any of which shall constitute an agreement by and among the Parties who have executed this Agreement, provided that each Party shall transmit to the attention of the Covington City Clerk an original, executed signature page of this Agreement. The Covington City Clerk shall cause a copy of this Agreement and a copy of each executed signature page of each party to be posted on the Covington City website pursuant to RCW 39.34.040.

Signatures appear on next page

IN WITNESS WHEREOF, the parties below execute this Agreement, which shall become effective pursuant to the terms of Section 5, herein.

<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> (Title)</p> <p>DATE: <u>2/10/12</u></p>	<p>MAPLE VALLEY:</p> <p>CITY OF MAPLE VALLEY;</p> <p>By: _____ (signature)</p> <p>Print Name: <u>David W. Johnston</u> Its <u>City Manager</u></p> <p>DATE: <u>2/16/2012</u></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>

