

Clerk's
Receiving No. 805
Date: 08/14/2006
Reference: R-06-4657
City Clerk: Deputy J

CITY OF MAPLE VALLEY AND SOOS CREEK WATER AND SEWER DISTRICT INTERLOCAL AGREEMENT FOR PROVISION OF SEWER SERVICE BY DISTRICT WITHIN CITY

THIS AGREEMENT, made and entered into this 21st day of June, 2006, by and between the **CITY OF MAPLE VALLEY**, a Washington municipal corporation, hereinafter referred to as "the City," and **SOOS CREEK WATER AND SEWER DISTRICT**, a Washington municipal corporation, hereinafter referred to as "the District," both being duly organized and existing under and by virtue of the laws of the State of Washington,

WITNESSETH:

WHEREAS, the District is a public agency authorized by law to engage in furnishing sanitary sewer service, and this Agreement will not limit that statutory authorization; and

WHEREAS, the City may, through the City Council, enter into interlocal agreements with respect to the rights, powers, duties, and obligations of municipal parties regarding the use of public rights-of-way and other public property, the provision of services, the maintenance and operation of facilities, the performance of contractual obligations and any other matters arising out of the provision of District service to areas within the City, all pursuant to and in accordance with state law, including RCW 39.34.080, RCW 35.92.010, RCW 35A.47.040, and Chapter 57.08 RCW; and

WHEREAS, the District has the ability and authority to provide sanitary sewer service to the areas described in **Exhibit A**;

NOW, THEREFORE:

Clerk's

Receiving No.

Date:

IT IS HEREBY AGREED by and between the parties hereto as follows:

City Clerk

SECTION 1. District Facilities Within City. The City and the District hereby agree that the District, its successors and assigns, for a period of fifteen (15) years, commencing on the effective date of this Agreement, shall exercise its right and privilege to lay down, construct, relay, connect, replace and/or maintain such and so many pipes, conduits and mains, and all other appurtenances, appendages, and facilities thereto, in, along, through, and under the avenues, streets, highways, and road rights-of-way controlled by the City now, and as hereafter amended through annexations, as specifically described in **Exhibit A**, attached hereto and incorporated herein by this reference, as may be necessary, convenient and/or proper in order to provide sanitary sewer service to the public, and for that purpose to make any and all connections which may be necessary, convenient and/or proper, in accordance with the terms and conditions set forth herein.

SECTION 2. Authority To Manage, Regulate, And Control Sanitary Sewer System. Consistent with the terms of this Agreement, the District shall have the sole responsibility to maintain, manage, conduct and operate its sanitary sewer system as installed within the area described in **Exhibit A**, together with any additions, extensions and betterments thereto.

SECTION 3. Authority To Fix Service Rates. The rates charged to the sanitary sewer service area described in **Exhibit A** shall be fixed, altered, regulated, and controlled solely by the District, pursuant to the limitations on such authority as set forth in Chapter 57.08 RCW, or any applicable regulations promulgated thereafter by the state on the subject of rates and charges for sanitary sewer service.

SECTION 4. Non-Exclusive. The rights described in this Agreement shall not be deemed or held to be exclusive. Except for provision of sanitary sewer service to the public within the areas described in **Exhibit A**, it shall in no manner prohibit the City from entering into

other agreements or franchises of a like nature or franchises for other public or private utilities, in, over, along, across, under, and upon any of the streets, avenues, highways, alleys, or public places, or ways as herein described, and shall in no way prevent or prohibit the City from using any of said streets, avenues, etc., or limit its jurisdiction over them or any part of them with full power to make all necessary changes, relocations, repairs, or maintenance of same as it deems fit.

SECTION 5. Approval of Plans. Prior to construction, repair, or maintenance of any of the pipes, conduits, mains, facilities, and appurtenances in the area described in Section 1 and Exhibit A herein, the District shall submit to the Director of Public Works or his designee ("Director") for review and approval, the requested number of plan sets drawn to an accurate scale, showing the exact location, character, position, dimension, depth, and height of the work to be done. The plans shall accurately depict the relative position and location of all pipes, conduits, mains, manholes, facilities, and appurtenances to be constructed, laid, re-laid, installed, replaced, repaired, connected or disconnected, and the existing street, avenue, alley, highway, right-of-way or property lines. All streets, avenues, highways, alleys, lanes, or ways denoted thereon shall be designated by their names and number and the local improvements therein such as roadway pavement, shoulders, sidewalks, curbs, gutters, ditches, driveways, parking strips, telephone or electric distribution poles, conduits, storm, gas, or water pipe lines as may exist on the ground or area sought to be occupied shall be outlined.

In the construction proposed by the District, all materials and equipment shall be as specified in the District's general conditions and standards and as approved by the City. The exact class and type to be used shall be shown on the plans, as will the equipment to be used and the mode of safeguarding and facilitating the public traffic during construction. The manner of excavation, construction installation, backfill, and temporary traffic control measures (such as traffic turnouts, road barricades, etc.) shall meet with the approval of, pass all requirements of, and be constructed in conformance with approved plans, permit conditions, and specifications under the inspection supervision of the Director. Prior to approval of any work under this Agreement, the Director may require such modifications or changes, as he/she deems necessary

to properly protect the public in the use of the public places, and may fix the time or times within and during which such work shall be done.

The District shall pay to the City such amounts as, in the judgment of the Director, are reasonably necessary to investigate and process any plans for construction work, to inspect such work, to secure proper field notes for location, to plot such locations on the permanent records of the City's Public Works Department, to supervise such work, or to inspect or re-inspect as to maintenance, during the progress of or after the repair of, any of the initial construction authorized by this Agreement. The City shall make its best efforts to complete all inspections in a timely manner.

SECTION 6. Protection Of Public. Whenever an accident, faulty operation, or excavation or fill associated with the construction, installation, maintenance or repair of the facilities authorized under this Agreement has caused or contributed to a condition that appears to substantially impair the structural integrity of the adjoining street or public place, or endangers the public, adjoining public place, street utilities, or City property as determined solely by the Director, the Director may direct the District, at its own expense, to take actions to protect the public, adjacent public places, City property, and street utilities and may require compliance within a prescribed time.

In the event that the District fails or refuses to take the actions directed promptly, or fails to fully comply with such directions given by the Director, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the structural integrity thereof, including placing of temporary shoring, backfilling, alterations of drainage patterns and any other actions reasonably necessary to decrease the possibility of earth movement, or actions regarded as necessary safety precautions, and the District shall be liable to the City for the costs thereof.

SECTION 7. Repair Of Streets, Sidewalks, Public Places and/or City Facilities.
After construction, maintenance, or repair of the facilities authorized by this Agreement, the

District shall repair and restore any damaged or injured streets, avenues, highways, public places, City facilities, or affected portions of same, to their original condition. The Director shall have final approval of the condition of such streets and public places after completion of construction.

SECTION 8. Indemnification. The District hereby releases, covenants not to bring suit against, and agrees to indemnify, defend, and hold harmless the City, its officers, officials, employees, agents, and representatives, from any and all claims, costs, judgments, awards, or liability to any person, including claims by the District's own employees to which the District might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property of which the negligent acts or omissions of the District, its agents, servants, officers, or employees in performing this Agreement are the proximate cause. The District further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person including claims by the District's own employees to which the District might otherwise be immune under Title 51 RCW, arising against the City solely by virtue of the City's ownership or control of the rights-of-way or other public property by virtue of the District's exercise of the rights granted herein, or by virtue of the City's permitting the District's use of the City's rights-of-way or other public property, based upon the inspection or lack of inspection of work performed by the District, its agents, and servants, officers, or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this Agreement or pursuant to any other permit or approval issued in connection hereto.

This covenant of indemnification shall include, but not be limited by this reference to, claims against the City arising as a result of the negligent acts or omissions of the District, its agents, servants, officers, or employees in performance of work or services permitted under this Agreement. Inspection or acceptance by the City of any work performed by the District at the time of completion shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the

institution of any litigation, provided that the District shall not be liable to indemnify the City for any settlement of any action or claim effective without the consent of the District, but if settled with the consent of the District, the District shall indemnify and hold harmless the City from and against loss or liability by reason of such settlement. The District shall be obligated to indemnify the City regardless of whether the settlement of the action on the claim is made with the consent of the District if the District has refused to defend the City.

In the event that the District refuses the tender of defense in any suit or claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal on the part of the District, then the District shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorney's fees and the reasonable costs of the City, including reasonable attorney's fees for recovery under this indemnification clause.

In the event of liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of the District and the City, its officers, officials, employees or agents, the District's liability hereunder shall be only to the extent of the District's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the District's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

SECTION 9. Insurance. The District shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to the District, its officers, officials, agents, or employees. The District shall provide a copy of such insurance policy to the City for its inspection prior to the adoption of this Agreement.

- a. Minimum Scope of Insurance. District shall obtain insurance of the types described below:

(1) Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

(2) Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, and personal injury and advertising injury and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse, or underground property damage. The City shall be named as an additional insured under the District's Commercial General Liability insurance policy with respect to work performed for the City using ISO Additional Insured Endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

(3) Professional Liability insurance appropriate to the District's profession.

(4) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

b. Minimum Amounts of Insurance. The District shall maintain the following insurance limits:

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

(2) Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate, and a \$2,000,000 products-completed operations aggregate limit.

(3) Professional Liability insurance shall be written with limits of no less than \$1,000,000 per claim.

SECTION 10. Relocation Of Lines And Facilities. The District agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate, or remove from any street or public place within the Agreement area, any of its installations when so required by the City by reason of traffic conditions or public safety, dedications, or new rights-of-way and the establishment and improvement thereof, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity, provided that the District shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same street upon approval by the City, any sanitary sewer line or portion thereof required to be temporarily disconnected or removed; and provided further, that this provision will not apply to District installations located within easements owned by the District.

The City shall consult all as-built maps and plans filed by the District pursuant to this Agreement or any permits authorized under this Agreement, in order to determine whether the District has placed pipe or facilities in any area affected by a proposed City project. The City will make its best effort and attempt to design or redesign streets, avenues, alleys or public places or ways, and other City utilities to minimize the impact thereof on the District's existing sanitary sewer systems, including the need to require the District's facilities to be relocated. PROVIDED HOWEVER, that the City shall make the final determination on the need for relocation of the District's facilities.

Whenever the City determines that any of the above circumstances necessitate the relocation of the District's then existing facilities, the City shall notify the District in writing and provide the District with copies of pertinent portions of the plans and specifications for such project so that the District is able to relocate its facilities to accommodate the City's project at least ten (10) days prior to the project's commencement. The City shall provide notice to the District and require relocation of the facilities in a period of time that is reasonable given the circumstances surrounding the project. The City understands that pursuant to RCW 57.08.050,

the District is required to comply with certain notice and bid procedures prior to commencement of any construction project. Whenever practical, given the circumstances surrounding the City's project, the City shall provide the District with sufficient notice to enable the District to comply fully with RCW 57.08.050 without resorting to emergency powers granted therein. Upon the District's failure to complete relocation of its installations and facilities as directed by the City, the City may remove same at the District's expense.

If, after reviewing the as-built maps and plans submitted by the District, the City determines that the District's pipe or facilities will not be affected by a proposed City project, no notice shall be given to the District. The City may then commence construction and if the City finds that the District's as-built maps and plans are inaccurate through the actual discovery of pipe and facilities in the construction area, the City shall notify the District and allow the District twenty-four (24) hours, when reasonable, to remove and/or relocate its pipe and facilities. However, should the District be unable to remove and/or relocate its pipe and facilities within this twenty-four (24) hour period after notification, the City may remove and dispose of same at the District's cost.

SECTION 11. Abandonment of Sanitary Sewer Pipe, and System Facilities. No pipe, conduit, main, appurtenances, appendages or sanitary sewer system facilities may be abandoned by the District without the express written consent of the City. Abandonment procedures may be initiated by application of the District to the City, which application shall detail, to the City's satisfaction, the location of all pipe or facilities to be abandoned by providing to the City with the abandonment application current as-built drawings showing the exact location of all pipes or facilities to be abandoned, and the procedures the District plans to implement in order to comply with all local, state, and federal regulations as well as pertaining to abandonment of sanitary sewer pipe and facilities constructed of asbestos cement or other materials containing asbestos. The District shall, at its sole cost and expense, and pursuant to all local, state, and federal regulations, remove and properly dispose of all abandoned pipes and sanitary sewer facilities when so directed by the City for any reason, with cause. The District will commence the removal and disposal of the abandoned facilities within thirty (30) calendar days,

and will fully complete the removal within one hundred eighty (180) calendar days from the date the City directs the removal, unless the City agrees, in writing, to extend the time for removal. In addition to and in clarification of the indemnity provisions in Section 8, the District specifically shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the abandonment and/or removal of District pipe and facilities, including sanitary sewer pipe and facilities constructed of asbestos cement or other material containing asbestos. In the case of street vacations, the City shall, to the extent possible, retain and grant an easement to the District for any pipe and facilities then in use by the District. The City shall give notice to the District of any proposed project or street vacation requiring removal of abandoned pipe and facilities as set forth in Section 11. If the District does not comply within the time period set by the City, the City may arrange for the removal and proper disposal of all such pipes and facilities at the District's cost.

SECTION 12. *Excavation.* During any period of installation, relocation, maintenance, or repair of the District's facilities and installations, all surface structures, if any, shall be erected and used in such places and positions within said public rights-of-way and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property, and the District shall at all times post and maintain proper barricades during such period of construction as required by state law or City ordinance.

Whenever the District shall excavate in any public right-of-way or other public property for the purpose of installation, repair, maintenance, or relocation of its facilities, it shall apply to the City for a permit to do so and except in the case of an emergency, shall give the City at least three (3) working days notice thereof. In the event that emergency work is required, the District may, without prior written notice to the City, request permits by telephone. The Director shall grant or deny such permits by telephone, but the District shall follow-up all phone emergency permit requests with a written application within three (3) working days of the telephone notification to the Director. In all other cases, the City shall approve the District's applications for permits as soon as reasonably possible. During the progress of the work, the

District shall not unnecessarily obstruct the passage or proper use of the right-of-way, and shall file maps or plans with the City (as described in Section 5 herein) showing the proposed and final location of the sanitary sewer facilities.

If either the City or the District shall at any time plan to make excavations in any area covered by this Agreement and as described in this section, the party planning such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made; (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and (3) either party may deny such request for safety reasons.

Prior to commencement of any construction authorized by this Agreement, the District shall reference all monuments and markers of every nature relating to subdivision plats, highways and all other surveys for review and inspection by the City. The reference points shall be so located that they will not be disturbed during the District's operations under this Agreement. The method of referencing these monuments or other points to be referenced shall be approved by the Director before placement. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit and as directed by the Director. The costs of monuments or other markers lost, destroyed, or disturbed and the expense of replacement by approved monuments shall be borne by the District.

SECTION 13. Permits Required. This Agreement does not release the District from any of its obligations to obtain applicable local, state, and federal permits necessary to install, construct, operate, maintain, remove, repair, reconstruct, replace, use and inspect its sanitary sewer system.

SECTION 14. Compliance With Laws. The District shall indemnify the City, its officers, officials, agents, employees or representatives against any claim or liability arising from or based upon the violation by the District of any laws, ordinances or regulations.

SECTION 15. City Construction Adjacent To District Installation. The laying, construction, maintenance, and operation of the said District's system of sanitary sewer lines, pipes, conduits, mains, etc., authorized under this Agreement shall not preclude the City or its accredited agents and contractors from excavating, grading or doing other necessary road work contiguous to the said District's pipe lines, provided that the District shall have forty-eight (48) hours notice of said excavation, grading or road work in order that the District may protect its line of pipe and property.

SECTION 16. Modification. The City and District hereby reserve the right to alter, amend or modify the terms and conditions of this Agreement upon written agreement of both parties to such alteration, amendment, or modification.

SECTION 17. Bond. The City and the District acknowledge RCW 35A.21.250. The District shall not be required to furnish any bond before undertaking any of the work, improvements, repair, relocation, or maintenance authorized by this Agreement.

SECTION 18. Enforcement. If the District or the City willfully violates or fails to comply with any of the provisions of this Agreement, then the non-breaching party may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling compliance with the provisions of this Agreement and to recover damages and costs incurred by reason of the failure to comply.

SECTION 19. City Ordinances and Regulations. Nothing herein shall be deemed to limit the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Agreement, including any reasonable ordinance made in the exercise of its police powers in the interest of the public safety and for the welfare of the public. The City shall have the authority at all times to control by reasonable and appropriate regulations the location, elevation and manner of construction and maintenance of any sanitary sewer facilities by the District, and the District shall promptly conform with all such

regulations, unless compliance would cause the District to violate other requirements of law. The District further agrees to adhere to City Ordinance No. O-04-260 prohibiting excavations in City street within 5 years of paving.

SECTION 20. Cost Of Publication. The cost of publication of any ordinance adopting this Agreement shall be borne by the District.

SECTION 21. Assignment. The District may not assign the rights, duties, and obligations under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld. If such consent is given for assignment, acceptance of the assignment shall be filed by the District's successor with the City.

SECTION 22. Successors And Assigns. All the provisions, conditions, regulations, and requirements contained in this Agreement shall be binding upon the successors and assigns of the District, and all privileges, as well as all obligations and liabilities, of the District shall inure to its successors and assigns equally as if they were specifically mentioned herein.

SECTION 23. Notice. Any notice or information required or permitted to be given to the parties under this Agreement may be sent to the following addresses unless otherwise specified:

CITY OF MAPLE VALLEY

ATTN: Public Works Director
P.O. Box 320
Maple Valley, Washington 98038
(425) 413-8800
(FAX) (425) 413-4282

SOOS CREEK WATER & SEWER DISTRICT

ATTN: District Manager
P.O. Box 58039
Renton, Washington 98058
(253) 630-9900
(FAX) (253) 630-5289

SECTION 24. Dispute Resolution. In the event any dispute arises between the Parties, either Party may request in writing that the issue in dispute be resolved by mediation

and, if necessary, binding arbitration. In the event the matter cannot be resolved by the mediation process then it shall go promptly to binding arbitration with no right of appeal. Arbitration shall be by the American Arbitration Association, or by such other entity as the Parties agree.

SECTION 25. Survival. All of the provisions, conditions, and requirements of this Agreement shall be in addition to any and all other obligations and liabilities the District may have to the City at common law, by statute, or by contract, and shall survive this Agreement's expiration for the use of the areas mentioned in Section 1 and Exhibit B herein, and any renewals or extensions thereof. All of the provisions, conditions, regulations, and requirements contained in this Agreement shall further be binding upon the successors and assigns of the District, and all privileges, as well as all obligations and liabilities, of the District shall inure to its successors and assigns equally as if they were specifically mentioned wherever the District is named herein.

SECTION 26. Severability. If any section, sentence, clause, or phrase of this Agreement should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Agreement. In the event that any of the provisions of this Agreement are held to be invalid by a court of competent jurisdiction, the City and the District reserve the right to reconsider this Agreement and by mutual agreement may amend, repeal, add, replace or modify any other provision, or may rescind execution of said provision under this Agreement.

SECTION 27. Effective Date. This Agreement shall be effective in thirty (30) days after execution.

Approved by ^{Resolution} Ordinance No. R-06-426 of the City Council of the CITY OF MAPLE VALLEY, Washington, at its regular meeting held on the 22 day of May, 2006.

CITY OF MAPLE VALLEY

Laure Iddings, Mayor

ATTEST:

Irvine Moni, City Clerk

APPROVED AS TO FORM:

Bruce Disend, City Attorney
Joseph Levan, Assistant City Attorney

Approved by Resolution No. 2832-S of the Board of Commissioners of **SOOS CREEK WATER AND SEWER DISTRICT** of King County, Washington, adopted at its regular meeting held on the 7th day of June, 2006.

SOOS CREEK WATER AND SEWER DISTRICT

By: _____
Karen Webster, President of Board

By: _____
Philip Sullivan, Secretary of Board

ATTEST:

Ron Speer, District Manager

APPROVED AS TO FORM:

Michael Hanis, Attorney for District



EXHIBIT "A"
CITY OF MAPLE VALLEY /
SOOS CREEK WATER & SEWER DISTRICT
INTERLOCAL AGREEMENT

- SCWSD CORPORATE BOUNDARY
- SCWSD PLANNING AREA BOUNDARY
- CITY CORPORATE BOUNDARIES

PROPOSED SEWER SERVICE PLANNING AREA

APPROVAL

SOOS CREEK W & S DISTRICT

CITY OF MAPLE VALLEY

