



**SOOS CREEK WATER AND SEWER DISTRICT**

**KING COUNTY, WASHINGTON**

**RESOLUTION NO. 3004-S**

**A RESOLUTION** of the Board of Commissioners of Soos Creek Water and Sewer District, King County, Washington, approving Interlocal Agreement with City of Covington.

**WHEREAS**, the District and the City of Covington have reached agreement regarding the terms of an interlocal agreement for authorization to the District for use of the City's streets, bridges and other public ways for sanitary sewer facilities; and

**WHEREAS**, the City Council of the City of Covington has considered and approved the terms of the proposed interlocal agreement; and

**WHEREAS**, the Board of Commissioners of the District has considered and approved the terms of the proposed interlocal agreement;

**NOW, THEREFORE, BE IT RESOLVED** by the Commissioners of Soos Creek Water and Sewer District, King County, Washington, as follows:

**SECTION 1:** That the Board of Commissioners of Soos Creek Water and Sewer District hereby authorizes execution of the following:

**CITY OF COVINGTON and SOOS CREEK WATER AND SEWER  
DISTRICT INTERLOCAL AGREEMENT FOR PROVISION OF  
SEWER SERVICE BY DISTRICT WITHIN CITY**

**SECTION 2:** That the President and Secretary of the Board, and the District Manager are authorized to execute the Interlocal Agreement on behalf of the District.

**RESOLUTION NO. 3004-S**

**SUBJECT:** Approving Interlocal Agreement with City of Covington; Provision of Sewer Service

**SECTION 3:** That the District shall take such action as is appropriate to accomplish the terms and purposes hereof.

Adopted by the Board of Commissioners of Soos Creek Water and Sewer District, King County, Washington, at a regular open public meeting thereof on the 26th day of September, 2007.

  
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**RANDY REECE, President**

  
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**KAREN WEBSTER, Secretary**

  
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**CLEMENT QUANRUD, Commissioner**

  
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**CONNIE SULLIVAN, Commissioner**

  
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**STEVE SANDELIUS, Commissioner**

**RESOLUTION NO. 3004-S**

**SUBJECT:** Approving Interlocal Agreement with City of Covington; Provision of Sewer Service

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INTERLOCAL AGREEMENT  
BETWEEN  
THE CITY OF COVINGTON AND SOOS CREEK WATER AND SEWER DISTRICT

THIS AGREEMENT is made and entered into by and between the City of Covington, a municipal corporation (City), and the Soos Creek Water and Sewer District; a municipal corporation (District), for the purposes set forth below.

WHEREAS, the City annually proposes to improve various streets, (Projects); and

WHEREAS, the District annually proposes improvements to various sewer facilities; and

WHEREAS, the District provides water service in a portion of the City in accord with applicable Washington State and City of Covington laws, regulations and franchises; and

WHEREAS, the City and the District can achieve cost savings and benefits in the public's interest by each performing certain work for the other during construction of the Projects, (Project Work); and

WHEREAS, the Scopes of Work and Cost Estimates for the Project Work are to be completed at a future date, and approved for inclusion by addenda as a part of this Agreement by separate actions by the City and District; and

WHEREAS, The City and the District intend that this agreement will be supplemented by job specific agreements or by other agreements for the joint participation in the construction of municipal facilities to be agreed upon in the future; and

WHEREAS, actual costs will be determined as a result of approved contract bids and actual construction and construction administration costs approved by both parties;

NOW, THEREFORE in consideration of the following terms and conditions, the parties agree as follows:

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1. PROJECTS

The City shall annually supply to the District the following:

- a. A copy of its current 6 year Transportation Improvement Plan (TIP) and its 20-year Street Capital Improvement Plan as adopted by the City.
- b. A schedule of the projects planned for each calendar year as soon as it is available.
- c. Notice to the District of each project upon commencement of design.

The District shall annually supply the City the following:

- a. A copy of its current 6 and 20-year Capital Improvement Plan as adopted each year by the District.
- b. A schedule of the projects, located within the City of Covington and its Areas of Interest (as defined in the City Comprehensive Plan), planned for each calendar year as soon as it is available.
- c. Notice to the City of each project located within the City of Covington and its Areas of Interest, upon commencement of design.

In the event either party desires to partner with the other in a Project, notice shall be given to the other in writing and the parties shall negotiate a proportional allocation of cost for the Schedule of Shared Bid Items described in Section 3. below for each Project.

Each Project approved by the City and District for inclusion in this Agreement shall be attached, from time to time, as an addendum hereto and shall contain the proportional allocation of cost for the Schedule of Shared Bid Items described above. For each such project the parties will negotiate and mutually agree on one of the parties to act as the "Lead Agency". The other party is referred to herein as the "Other Party". Any designation of the District as "Lead Agency" pursuant to this section does not alter lead agency status for purposes of SEPA, nor does it shift responsibility and control over City Rights-of-Way or the authority to issue permits for any work referenced herein.

## 2. DESIGN

The Lead Agency shall prepare plans, specifications and contract forms and other necessary documents, suitable for public works Projects, based upon and in accordance with the current edition of the Washington State Department of Transportation and American Public Works Association Standard Specifications for Road, Bridge and Municipal Construction, (Contract Documents), in a manner suitable for including Other Party Work.

The Lead Agency shall supply to the Other Party the following: (1) Copies of progress and final base maps and construction plans, in mutually acceptable digital format as, requested by the Other Party. (2) Copies of Project specifications and other contract documents, in digital format, as requested by the Other Party.

The Other Party shall, in a timely manner, furnish construction drawings, special contract provisions, and other necessary documents in mutually acceptable digital format for the Other Party Work to become a part of the City's Contract Documents for the Projects. The Lead Agency shall notify the Other Party of any changes, which must be made to these documents to bring them into conformance with Lead Agency requirements, which changes shall be promptly made by the Other Party. Engineering design costs for plan modifications to integrate into a bid package will be borne by each agency for their engineering work or as mutually agreed to.

The Lead Agency shall incorporate the Other Party plans and specifications into the Contract Documents and shall separate the bid items into separate bid schedules: One bid schedule for Lead Agency and shared bid items and one bid schedule for each utility included in the project. The utility bid schedules will include items exclusively for that utility. The Other Parties may elect to have their work incorporated into the bid documents as part of the base bid or as either additive or deductive schedules. The parties can mutually agree to share in the cost of design for any part of, or for all of, any project. Cost sharing on design work shall be proportionate to the time and complexity of the design work for each party's share. The cost of construction of each party's work may be a factor but shall not be determinative of that party's share of the design work.

### 3. ALLOCATION OF COSTS FOR SHARED BID ITEMS

To protect the District and the City from having a bidder shift disproportionate costs of shared items onto the District's or the City's bid schedule, bid items such as, but not limited to, Mobilization, Clean-up, Demobilization, Temporary Erosion Control, and various items related to Traffic Control will all be contained within a separate Schedule of Shared Bid Items. The cost of said bid items will be proportioned between the City and the District based on either (1) Identification of bid items subject to cost sharing and item by item proportional allocation of cost as agreed between the parties prior to bid advertisement, or (2) Identification of bid items subject to cost sharing as agreed between the parties prior to bid advertisement and proportional allocation of their cost based solely upon the costs of the City and District Bid Schedules relative to the sum of the two. The parties shall agree to the method for cost sharing separately for each Project. The derived allocation percentages shall be applied to the engineer's estimate to determine each party's estimated dollar share prior to bids. The derived allocation percentages shall be applied to the contract bid to estimate each party's contract share and shall be applied to the final contract cost for these items to determine each party's final contract share.

### 4. BIDDING

The Lead Agency shall furnish the Other Party with the bid, bid prices, and the list of contractors and subcontractors for the Other Party Work for the Other Party's approval. The Other Party shall review the bid documents and notify the Lead Agency in writing whether the Other Party approves or rejects the bids for the Other Party's work. The Lead Agency shall not proceed with the Other Party Work if the Lead Agency has found or received written notification from the Other Party that the Other Party has found supportable grounds for rejecting the bid(s) for Other Party's work. Bid awards shall be made to the lowest responsible bidder for the Project, subject to applicable laws and regulations.

In the event the Other Party rejects the lowest responsible bid, and the Other Party Bid Schedule is additive or deductive, the Other Party may elect to have its own contractor do the Other Party Work. Timing of work issues shall be determined in each project specific supplemental agreement. The Other Party shall complete its work prior to the scheduled

beginning of the Lead Agency's work, provided that the Lead Agency may, in its sole discretion, allow the Other Party's Contractor to perform work concurrently with the Lead Agency's Contractor. In such event, the Other Party shall require its contractor to coordinate all Other Party Work located at the Project site with the Lead Agency Contractor and with any contractors or work crews from other utilities and to not unreasonably interfere with or delay the Lead Agency's Contractor or the work by other utilities. The Other Party shall notify its Contractor of such requirement and shall provide written notice to the Lead Agency and the Lead Agency's Contractor 10 days prior to beginning Other Party Work on the Project site.

## 5. CONTRACT ADMINISTRATION

- a. The Lead Agency shall provide the necessary engineering, administration, inspection and clerical services necessary for the construction management of the Project. In providing such services, the Lead Agency may exercise all the powers and perform all the duties as authorized by law and this agreement, including, but not limited to, enforcement and interpretation of the contract documents, plans and specifications. The Lead Agency may enter into a contract with a consulting firm and hire limited term contract employees to perform many of these construction management services. The Lead Agency shall prepare the agreements and the Other Party shall participate in determination of contract scope of work and terms for such services. The Other Party will pay to the Lead Agency its share of such services. The Other Party share percentage shall equal the ratio of the final bid amount of the Other Party bid schedule divided by the final bid amount of the sum of Lead Agency and Other Party bid schedules, as described in Section 2. above.
- b. The Other Party may furnish, and the Lead Agency will allow, an inspector to be on the Project site to verify proper compliance with requirements set forth in the Contract Documents while the Contractor is doing the Other Party Work. The Other Party's inspector shall advise the Lead Agency of any deficiencies noted in the Other Party Work. The Lead Agency may designate the Other Party's inspector as the Lead Agency's agent to communicate directly with the Contractor's field personnel regarding compliance with the contract specifications for the Other Party Work. The Other Party's inspector shall maintain a daily record pertaining to the project, and shall assist the Lead Agency's contract management personnel in preparing reports of daily quantities of Other Party work. The District and the City mutually recognize that special circumstances may create the need to allow the Contractor to work on weekends, holidays or at times outside the normal workday hours established in the Contract. Both the City and the District will provide personnel they each determine is needed to be on site and/or on call during these work times and each will be responsible to provide regular and overtime compensation to their own employees as each determines is needed. Payment from the Contractor to compensate for such overtime work by City or District employees, shall be shared by the City and the District in proportion to their direct costs for the work performed under such conditions.

- c. During construction, the Other Party shall notify the Lead Agency as soon as practicable, in writing, of any changes it wishes to make in the plans and specifications that affect the Other Party Work. Such changes shall be made, if feasible. Similarly, the Lead Agency will notify the Other Party as soon as practicable of any changes required by the Lead Agency in the scope of the Project, or of any changes that substantially change the nature of the Other Party Work and will obtain the Other Party's approval of such changes to the Other Party Work. Notification by a party shall be given prior to commencement of the changes. The cost of the change shall be borne by the party initiating the changes, and any cost savings shall benefit the party initiating the changes provided that those cost savings are applicable to expenses that party would otherwise have been subject to pay. When calculating the cost of changes, such calculation shall include costs to other items of work impacted by the change and/or claims arising from the change. The Lead Agency shall act as the Other Party's agent in negotiating change orders and/or force account work with the Contractor, provided that the Other Party should be given notice and an opportunity to have input and the right to reject any change order relating solely to Other Party's work.
- d. The Lead Agency shall provide the Other Party with written notice of substantial completion of the Project Work. The Other Party shall perform final inspection of the Other Party Work. The Other Party shall, within 30 calendar days of its final inspection, provide to the Lead Agency final acceptance of the Other Party Work, or alternatively, provide an itemized and detailed response as to why final acceptance by the Other Party Work cannot be given. If the Other Party fails to respond to the Lead Agency within said 30 calendar days of the Other Party's receipt of the notice of completion from the Lead Agency, the Other Party will be deemed to have given final acceptance of the Other Party Work. Upon final acceptance of the Other Party Work, the Lead Agency shall be relieved of any and all responsibility and/or liability for the Other Party Work and the condition of the Other Party facilities, provided that, the Lead Agency shall assign its rights under the Project contract relating to the Other Party Work to the Other Party, including warranty and maintenance obligations by the Contractor relating to the Other Party Work. The Lead Agency shall require the Contractor, according to the provisions enforceable in the Project contract, to maintain the maintenance bond in effect for a period of not less than 2 years following the Lead Agency's final acceptance of the Contractor's work to cover the cost of repairing or replacing faulty materials or workmanship and shall join with the Other Party in any action taken by the Other Party to enforce the conditions of said maintenance bond. In the event enforcement action is taken by the Lead Agency, the Other Party, or jointly, the costs of such enforcement action shall be borne by each in proportion to the relative value of the claim/claims awarded. No legal action may be commenced by either party without the express written consent of the other party, unless the legal action does not involve the claim of the remaining party.
- e. The Lead Agency shall provide the Other Party with record drawings (as built), in mutually acceptable digital format, of the Other Party Work within 10 days of the notice to the Other Party of project completion. The revisions to the contract plans shall be

incorporated onto the record drawings digitally. The record drawings for water facilities and roadway/stormwater facilities shall conform to the District and City standard details for record drawings. The work described in this sub-section 5.e. shall be included in the consultant construction management services contract/s described in Subsection 5.a. above.

- f. The agency that will ultimately own and operate the particular facility will have the option to take the lead in negotiating and shall have the full and sole authority, after consultation with the Other Party, to directly negotiate the contract, any change orders, force account work, design changes and contractor claims relating to such facilities.

## 6. TERM

The term of this agreement shall be indefinite. Either party may terminate this agreement on 60 days notice provided that the terms of this and any supplemental agreement shall continue through the completion of any pending project.

## 7. PAYMENT

The Other Party shall reimburse the Lead Agency for all costs reasonably incurred by the Lead Agency in performing the Other Party Work, which costs shall include:

- a. The cost of all work pursuant to the Other Party Bid Schedule.
- b. The Other Party's proportionate share of the cost of all work performed pursuant to the Schedule of Shared Bid Items. To the extent that other parties contribute toward the cost of these Shared Bid Items, the payments received from those parties will be credited to the City and the District in accordance with their proportionate share.
- c. The cost of all change orders initiated by the Other Party as described in sub-section 5.c.
- d. The Other Party's proportionate share of the Lead Agency's contract administration services in the amount of 5% of the sum of the costs of 7.a., 7.b., and 7.c. above.
- e. The Other Party's proportionate share of consultant construction management services as described in sub-section 5.a.

The Lead Agency shall provide monthly progress payment estimates for the Other Party Bid Schedule and the Schedule of Shared Bid Items to the Other Party for Other Party review and written approval. The Other Party shall return said progress payment estimates as revised and approved to the Lead Agency within 10 calendar days of their receipt. The Lead Agency shall make payment to the Contractor pursuant to said progress payment estimates, only as approved by the Other Party. The Other Party shall reimburse the Lead Agency within 30 calendar days of Other Party approval for the progress payment estimates as approved by the Other Party. Past due undisputed payments shall accrue simple interest at the rate of one percent (1 %) per month until paid.

## 8. INDEMNIFICATION AND HOLD HARMLESS

Each party to this Agreement hereto agrees to protect, defend, and indemnify the other party, its elected and appointed officers, officials, employees, volunteers and agents from any and all costs, claims, judgments and/or awards of damages arising out of or in any way resulting from the Party's default, failure of performance, or negligent conduct associated with this Agreement, by the Party, its employees, subcontractors or agents. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the Other Party only, and only to the extent necessary to provide each Party with a full and complete indemnity of claims made by the Other Party's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

Claims shall include, but not be limited to, defects or mistakes in plans, specifications and or drawings, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction of any kind, delivered hereunder, constitutes an infringement of any copyright patent, trademark, trade name, and/or otherwise results in unfair trade practice.

In the event either Party incurs any costs, including attorney fees or expert witness fees, to enforce this provision and substantially prevails in such enforcement action, all such costs and fees shall be recoverable from the losing Party.

The provisions of this section shall survive the expiration or earlier termination of the Agreement with regard to any event that occurred prior to or on the date of such expiration or earlier termination. .

## 9. OTHER PROVISIONS

- a. The City shall retain ownership and usual maintenance responsibility for the road and stormwater facilities, landscaping, signs, signals and sidewalks. The ownership and control of any District facilities shall be as specified in the job specific supplemental contracts.
- b. This agreement contains the entire agreement of the parties and supersedes all prior discussions. This Agreement may be amended only in writing, signed by both parties.
- c. Nothing contained herein is intended to, nor shall be construed to create any *rig* in any third party, or to form the basis for any liability on the part of the parties to this Agreement, or their officials, officers, employees, agents or representative, to any third party.

- d. Waiver of any default or breach of terms Agreement shall not be deemed to be a waiver of any other prior or subsequent default or breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written agreement of both parties.
- e. If any provision of this Agreement is held invalid or unenforceable by a court competent jurisdiction, the remainder of the Agreement shall not be affected thereby and shall continue in full force and effect if such remainder would then continue to serve the purposes and objectives of the parties.

f. Resolution of Claims and Disputes

- i. Mediation. Any claim or dispute arising out of or related to this Agreement or the Project Contract, Plans and Specifications shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.  
The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be conducted by JAMS, WAMS, JDR or any other mutually agreeable mediator.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

- ii. Arbitration. Any claim arising out of or related to this Agreement or the Project Contract Plans and Specifications shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions set forth above,

Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be conducted by one of the entities identified in section f(i) above. The parties shall mutually agree upon an arbitration entity and arbitrator. In the event the parties are unable to select an entity or arbitrator then the choice shall be made by the Renton City Attorney. The demand for arbitration shall be filed in writing with the other party to the Contract. A demand for arbitration shall be made within a reasonable time after the claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations.

- iii. Timely Assertion of Claims and Disputes. The party filing a notice of demand for arbitration must assert in the demand all claims and disputes then known to that party on which arbitration is permitted to be demanded

- iv. Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction

#### 10. CONTRACTOR'S INDEMNIFICATION OF OTHER PARTY AND INSURANCE

The Lead Agency shall require the contractor building the Project to indemnify, defend, and save harmless the Other Party and its officers, agents, volunteers or employees from any claim damage, action, liability of proceeding brought or filed against the Other Party or its officers, agents or employees alleging damage or injury arising out of the contractor's participation in the Project. The Contractor shall also be required to waive the Contractor's immunity under Washington's Industrial Insurance Act, RCW Title 51, as to the Other Party solely for the purposes of the indemnification.

The Other Party, its elected and appointed officers, agents, volunteers and employees shall be named as also insured on all insurance policies to be maintained by contractor(s) under the terms of all Project contracts, with the Lead Agency contractor building the Project required to maintain Commercial General Liability Insurance, Commercial Automobile Insurance and Workers Compensation. The Contractor shall provide the Lead Agency with a certified copy of all policies with endorsements attached as are necessary to comply with the contract specifications. The Lead Agency shall provide the Other Party with copies of all such policies and documents upon receipt of same by the Lead Agency.

The Lead Agency shall require the contractor building the Project to be solely and completely responsible for safety and safety conditions at the job site, including the safety of all persons and property during performance of the work. The contractor shall comply with all applicable City and State regulations, ordinances, orders and codes regarding safety. The Other Party shall have no responsibility as to safety and safety conditions at the job site.

IN CONSIDERATION of the mutual benefit accruing herein, the parties hereto agree that the work as set forth herein will be performed by the City under the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date last written below.

CITY OF COVINGTON

SOOS CREEK WATER AND SEWER DISTRICT

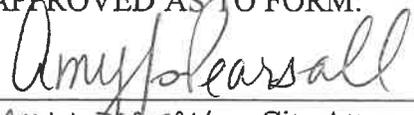
  
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Derek Matheson, City Manager

  
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Ron Speer, General Manager

9/6/07  
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DATE

9/12/06  
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DATE

APPROVED AS TO FORM:

  
\_\_\_\_\_  
AMY JO PEARSALL, City Attorney

APPROVED AS TO FORM:

  
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MICHAEL M. HANIS, District Attorney