

CITY OF MAPLE VALLEY

ORDINANCE NO. O-06-327

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLE VALLEY, WASHINGTON, GRANTING A NEW FRANCHISE TO CEDAR RIVER WATER AND SEWER DISTRICT, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of Maple Valley incorporated on August 31, 1997; and

WHEREAS, RCW 35.02.160 provides that any franchise or permit theretofore granted to any person, firm or corporation by the state or a county is automatically canceled upon incorporation, but that the City must grant such business a franchise to continue for a term of not less than the remaining term of the original franchise or permit, or seven years, whichever is shorter; and

WHEREAS, on August 25, 1997, the Maple Valley City Council granted Cedar River Water and Sewer District a franchise under the terms of King County franchise 11642; and

WHEREAS, the term of the franchise granted to Cedar River Water and Sewer District ended on August 31, 2004; and

WHEREAS, a franchise governing the provision of public water supply is necessary for the preservation of the peace, health, and welfare of the citizens of Maple Valley; and

WHEREAS, Cedar River Water and Sewer District has prepared a map defining the territory within Maple Valley whose public water supply is provided by Cedar River Water and Sewer District; and

WHEREAS, the City has negotiated a new franchise with Cedar River Water and Sewer District for territory served by the District within Maple Valley; and

WHEREAS, the City Council finds the terms of the franchise to be acceptable to the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MAPLE VALLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Definitions.

1.1 Where used in this franchise agreement ("Franchise" or "Agreement") the following terms shall mean:

1.1.1 "City" or "Maple Valley" means the City of Maple Valley, a code city organized and existing under RCW Title 35A.

1.1.2 "City street" and "rights-of-way" shall mean "public streets" and "public ways" as those terms are defined by the Maple Valley City Code Section 12.15.005, located within the area described in the attached Exhibit "A."

1.1.3 "Director" refers to the Maple Valley Public Works Director.

1.1.4 "Grantee" refers to the CEDAR RIVER WATER AND SEWER DISTRICT, a municipal corporation organized and existing under RCW Title 57, its successors and those assignees approved pursuant to the requirements of this Franchise.

1.1.5 "Utility" refers either to the Grantee or, depending on the context, to any other person, firm, or corporation, public or private, which may hold a franchise to maintain and operate similar facilities in, under, over, across, and along any of the City streets or rights-of-way described in Exhibit "A."

1.1.6 "Council" refers to the Maple Valley City Council, acting in its official capacity.

1.1.7 "Other Governing Body" refers to any public official or other public board or body which may have the power and jurisdiction to permit or regulate the installation and maintenance of utilities and other facilities in, under, over, across, and along any of the City street rights of way described by Exhibit "A."

Section 2. General Terms and Conditions.

2.1. The Maple Valley City Council, having considered the interests proposed and advanced, and finding that the granting of a franchise is in the public interest, grants this Franchise to the CEDAR RIVER WATER AND SEWER DISTRICT, the Grantee. This Franchise grants the right, privilege, authority, and franchise to operate, maintain, repair, and construct water main(s) and service lines and appurtenances as a part of its transmission and distribution system in, over, along, and under City streets and rights-of-way located within the area described in Exhibit "A."

2.2. This Franchise is granted subject to all of the terms and conditions contained within this Agreement, and shall expire in approximately twenty years, more specifically on January 1, 2026.

Section 3. Acceptance by Grantee of Terms and Conditions.

3.1 The full acceptance of this Franchise and all of its terms and conditions shall be filed with the City Clerk within thirty (30) days from _____, 200____, by the Grantee. Full acceptance of this Franchise is a condition precedent to its taking effect, and unless this Franchise is accepted within the time specified, this grant will be null and void and have no force or effect.

Section 4. Non-Exclusive Franchise.

4.1 This Franchise is not exclusive. It does not prohibit the Maple Valley from granting franchises or permits for other public or private utilities, in, under, over, across, and along any City street or right-of-way.

4.2 This Franchise does not prevent or prohibit the City from constructing, altering, maintaining or using any City street rights-of-way covered by this Franchise. Maple Valley retains full power to make all changes, relocations, repair, and maintenance as it may deem fit.

Section 5. Jurisdiction.

5.1 This Franchise is intended to convey limited rights and interest only as to those roads and rights-of-way in which Maple Valley has an actual interest. It is not a warranty of title or of interest in City street rights-of-way nor does it convey any right to use City property other than rights of way.

5.2 Whenever the City changes its jurisdictional boundary through annexation of territory or other legally permitted action, the terms of this Franchise shall automatically apply to City streets and rights of way within the expanded territory to the extent permitted by applicable State law.

5.3 None of the rights granted to the Grantee shall effect the jurisdiction of Maple Valley over City street rights-of-way or the City's power to perform work upon its roadways, rights-of-way or appurtenant drainage facilities including by constructing, altering, renewing, paving, widening, grading, blasting or excavating.

Section 6. Regulation of Use and Control.

6.1 This Franchise does not deprive Maple Valley of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the City street rights-of-way covered by this Franchise.

Section 7. Enforcement.

7.1 Failure of Maple Valley to enforce any provision of this Agreement does not constitute a waiver of its right to enforce that provision or any other provision of this Agreement.

Section 8. Indemnification and Hold Harmless.

8.1 The Grantee agrees to indemnify and hold harmless Maple Valley as provided herein to the maximum extent possible under law with respect to acts or omissions of Grantee. Accordingly, the Grantee agrees for itself, its successors, and assigns to defend, indemnify and hold harmless Maple Valley, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof, for injury to persons, death or property damage which is caused by, arises out of, or is incidental to Grantee's exercise of rights and privileges granted by this Franchise. The Grantee's obligations under this section shall include:

8.1.1 The duty to promptly accept tender of defense and provide defense to the City at the Grantee's own expense.

8.1.2. Indemnification of claims made by the Grantee's own employees or agents.

8.1.3 Waiver of the Grantee's immunity under the industrial insurance provisions of Title 51 RCW, which waiver has been mutually negotiated by the parties.

8.2 In the event of concurrent negligence of Maple Valley and the Grantee, the Grantee's obligations hereunder shall be only to the extent of the Grantee's negligence.

8.3 In the event it is necessary for the City to incur attorney's fees, legal expenses, or other costs to enforce the provisions of this section, all such fees, expenses and costs shall be recoverable from the Grantee.

8.4 In the event it is determined that RCW 4.24.115 applies to this Franchise agreement, the Grantee agrees to defend, hold harmless and indemnify Maple Valley to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of Maple Valley to the full extent of Grantee's negligence. Grantee agrees to defend, indemnify and hold harmless the City for claims by Grantee's employees and agrees to waiver of its immunity under Title 51 RCW, which waiver has been mutually negotiated by the parties.

Section 9. Insurance.

9.1 The Grantee shall procure and maintain for the duration of this Franchise, 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 Grantee, its officers, officials, agents, or employees. The Grantee shall provide a copy of such insurance policy to the City for its inspection prior to the adoption of this Agreement.

9.2 Minimum Scope of Insurance. The Grantee shall obtain insurance of the types described below:

9.2.1 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.

9.2.2 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 Grantee'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.

9.2.3 Professional Liability insurance appropriate to the Grantee's profession.

9.2.4 Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

9.3 Minimum Amounts of Insurance. The Grantee shall maintain the following insurance limits:

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

9.3.2 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.

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

Section 10. Vacation.

10.1 If at any time Maple Valley vacates any City street rights-of-way covered by this Franchise, Maple Valley shall provide the Grantee notice under Chapter 35.79 RCW if Grantee has existing or planned facilities in the right of way and shall reserve an easement for Grantee's facilities in connection with any vacation. Maple Valley will not be held liable for any damages or loss to the Grantee by reason of such vacation. Maple Valley may, after giving thirty (30) days written notice to the Grantee, terminate this Franchise with respect to any City street rights-of-way vacated.

Section 11. Installation, Repair, Removal, or Relocation.

11.1 The Grantee shall, at no expense to the City, repair all existing facilities that it owns within City street rights-of-way if such repair is required by the City for any reasonable purpose.

11.2 The Grantee shall, at no expense to the City, adjust, remove or relocate existing facilities within City street rights-of-way if the City determines such adjustment, removal or relocation is reasonably necessary to allow for an improvement or alteration planned by the City in such street right-of-way. The City shall give the Grantee written notice of such requirement as soon as practicable, at the beginning of the pre-design stage for projects that are part of the City's capital improvement program, including such available information as is reasonably necessary for the Grantee to plan for such adjustment, removal or relocation. Subsequent to the receipt of this notice, the Grantee shall take all reasonable actions to relocate its facilities consistent with the City's capital project plan and schedule. The Grantee further agrees to adhere to City Ordinance No. O-04-260 prohibiting excavations in City streets within 5 years of paving.

11.3 For projects that are a part of the City's capital improvement program, in addition to any other notice given to the Grantee, the City shall provide a vertical and horizontal profile of the roadway and drainage facilities within it, both existing and proposed by the City, and the proposed construction schedule; notwithstanding any permit conditions that may later be applied to the City project, this initial design information shall be given at least 180 days before construction is scheduled to begin, except in cases of urgent construction or emergencies. The Grantee shall respond to this notice, and to any later notices of revised designs based on permit conditions, within no more than thirty (30) days by providing to the City the best available information as to the location of all of the Grantee's facilities, including all appurtenant facilities and service lines connecting its system to users and all facilities that it has abandoned, within the area proposed for the public works project. If existing records regarding the size, depth, location or condition of Grantee's facilities are of questionable accuracy and important to the design of the City's capital project, Grantee will pothole the necessary locations and provide the data to the City.

11.4 Notwithstanding the foregoing, Grantee may within thirty (30) days of receiving proposed roadway design plans, provide written suggestions to Maple Valley to reduce the impacts on Grantee's facilities. Maple Valley shall consider such suggestions in good faith, require only such facility relocations as are reasonably necessary based on sound engineering practices, and adjust the plans accordingly.

11.5 The Grantee may request the City to arrange for the City's contractor to perform work for the Grantee in relocating, adjusting or modifying the Grantee's facilities as required by the City's capital project. The City may accept or reject the Grantee's request. If the City rejects the Grantee's request or the Grantee withdraws its request, the rejection does not excuse the Grantee from any requirement for relocating its facilities to accommodate the City's capital project design and schedule. If the City decides to grant the Grantee's request, the Grantee shall provide all necessary design information, technical specifications and/or materials necessary for incorporating the Grantee's work.

11.6 If the Grantee's work is included within the City's contract, the Grantee will be given the opportunity to participate in the preparation of bid documents for the selection of a contractor to perform the public works project as well as all required adjustments, removals or relocations of the Grantee's facilities. Such bid documents shall provide for an appropriate and reasonable cost allocation between the parties provided that, if the City notifies Grantee to relocate any facility installed during the previous five (5) years pursuant to plans reviewed by the City, the City shall pay all of the relocation costs. The City shall have sole authority to choose the contractor to perform such work. The Grantee shall be responsible for a reasonable cost for incorporating the Grantee's work including change orders, a reasonable cost allocation for inspection, traffic control and administration and the amounts paid to the City contractor in executing the Grantee's work. If, after bids are opened, Grantee decides to remove its work from the City's contract, Grantee shall reimburse the City for cancellation costs including valid claims made by firms bidding on the City's contract. Change orders requested by the Grantee must be requested in a timely fashion and include acceptance of reasonable costs, including City administrative cost, in connection with the requested change. Change orders to the Grantee's work necessitated because of the Grantee's failure to provide sufficient design data for incorporation into the City's contract

shall be paid by the Grantee upon notice by the City. Grantee may participate in negotiations with contractors over costs and scopes of work for proposed change orders.

Section 12. Requirement of Construction Permits.

12.1 The Grantee has the right, privilege and authority to enter and perform construction work in the City street rights-of-way for the purpose of operating, maintaining, repairing or constructing its service and main lines and water system facilities and appurtenances on the condition that it obtains applicable permits approved by the Director of Public Works and, when applicable, by the Director of Community Development. Applications for work permits shall be presented to the Public Works Department which may require copies of plans, blueprints, cross-sections, or further detailing of work to be done. Any work done, whether by Grantee, its contractors, or third parties will include necessary paving, patching, grading, traffic control and any other reasonably necessary repair or restoration to the City street rights-of-way. All work shall be done to the reasonable satisfaction of the Director.

12.2 All equipment, lines and appurtenances which are used in the operation, maintenance, repair or construction of the Grantee's service and which are located within the City street rights-of-way and owned by the Grantee shall be considered to be part of the Grantee's system and shall be the responsibility of the Grantee. All permits for construction work on said system shall be applied for and given in the name of the Grantee, who will be responsible for all work done under the permit. The Grantee remains responsible whether the work is done by the Grantee, its contractors, or by third parties.

12.3 The Grantee shall, at no expense to the City, assume the following obligations with respect to facilities owned by the Grantee that are within City street rights-of-way.

12.3.1 The Grantee shall apply for a City right-of-way construction permit for constructing, maintaining or repairing Grantee's facilities. All work to be performed in the City right-of-way shall comply with all conditions of the City permit and all applicable City requirements. The Grantee may at its option perform any part of the repair with its own forces or employ a contractor for that purpose, provided such contractor is approved by the City;

12.3.2 In the event that the City determines emergency repair of such facilities is necessary to halt or prevent significant damage to City street rights-of-way or significant threats to the health, safety or welfare of parties other than the owner or the occupants of the building served by such facilities, the Grantee shall take prompt remedial action to correct the emergency to the City's approval, which the City shall not unreasonably withhold;

12.3.3 When the City or its contractor provides notice to the Grantee, pursuant to Chapter 19.122 RCW, of its intent to excavate within City street rights-of-way, the Grantee shall provide to the City or its contractor the best information available from the Grantee's records or, where reasonable, from the use of locating equipment as to the location of such facilities, including surface markings where these would reasonably be of use in the excavation. If the Grantee fails to make good faith efforts to provide the above information within the deadlines provided by Chapter 19.122 RCW, the Grantee shall hold the City harmless for all reasonable costs that result from damage to such facilities if such damage occurs as a result of the failure to provide such information. Nothing in this subsection is intended or shall be construed to create any rights in any third party or to form the basis for any obligation or liability on the part of the City or the Grantee toward any third party, nor is anything in this subsection intended or to be construed to alter the rights and responsibilities of the parties under Chapter 19.122 RCW, as amended.

Section 13. Restoration of City Street Rights-of-Way.

13.1 After work on, under or adjacent to City street rights-of-way, the Grantee is responsible for and will leave all City road rights-of-way in at least as good a condition that existed before any work was done. In the event that the Grantee, its contractors, or third parties working under permit should fail to restore City street rights-of-way in a timely manner to the reasonable satisfaction of the Director, Maple Valley may make such repairs or restorations as are necessary to return the City street rights-of-way to their pre-work condition. Upon presentation of an itemized bill for repairs or restoration, including the costs of labor and equipment, the Grantee will pay the bill within sixty (60) days. If suit is brought upon the Grantee's failure to pay for repair and restoration, and if judgment in such a suit is entered in favor of Maple Valley, then the Grantee shall pay all of the actual costs, including

interest from the date the bill was presented, disbursements, and attorney's fees and litigation related costs incurred.

Section 14. Performance of Work and Compliance with Laws.

14.1 All work performed by the Grantee on City street rights-of-way shall conform to all City requirements including, but not limited to, the requirements of the current edition of the Maple Valley Road Standards in force when the work is performed and all traffic control shall also conform to the current edition of the annual of Uniform Traffic Control Devices in force when the work is performed.

14.2 Grantee shall conform to all applicable federal, state and local laws and regulations including, but not limited to, the State Environmental Policy Act and Maple Valley environmental standards and ordinances with regard to Grantee's operations within City. In the event of conflicts, federal or state law, whichever is applicable, shall control.

Section 15. Survey Markers and Monuments.

15.1 The replacement of all markers or monuments disturbed during any construction of the Grantee's facilities, whether done by Grantee or Grantee's contractor, shall be made as promptly as conditions permit and as ordered by the Director. The cost of monuments or markers lost, destroyed, or disturbed and the expense of replacement with approved markers or monuments shall be borne by the Grantee.

Section 16. Assignment.

16.1 The Grantee shall not have the right to assign this Franchise without the consent of the Maple Valley City Council. No assignment shall be effective unless the Assignee provides written acceptance of all rights, conditions, terms, provisions, and responsibilities contained within the Franchise. Council approval of the assignment may be made subject to the Assignee's acceptance of new or modified terms of the Franchise.

Section 17. Taxes, Modifications, and/or Revocation.

17.1 If the Grantee, its successor or assigns shall violate or fail to comply with any of the terms, conditions or responsibilities of this Franchise through neglect or failure to obey

or comply with any notice given the Grantee under the provisions of this Franchise, the Council may revoke, amend, alter, change or supplement this Franchise. The Council shall give ninety (90) day's written notice to the Grantee of its intention to do so, during which period the Grantee shall have the opportunity to remedy the failure to comply.

17.2 If the Council intends to revoke the Franchise, the Grantee will be given written notification. A public hearing shall be scheduled within ninety (90) days following the notification. The decision to revoke this franchise will become effective ninety (90) days following the public hearing if the Council finds the revocation to be in the public interest.

17.3 Maple Valley specifically reserves for itself the right to impose taxes, use fees, costs, service requirements, or other fees on the Grantee for the privilege of conducting this business in Maple Valley, for the use of the City's street rights of way, to pay for the cost of regulating this activity, or for any other public purpose so long as those taxes, use fees, costs, service requirements or other fees as authorized by law, are imposed by ordinance, and after sixty (60) days written notice to Grantee.

Section 18. Expiration and Renewal.

18.1 If the Grantee has initiated a renewal of this Franchise before it expires, the City may, at its sole discretion, extend the term of the Franchise on a month-to-month basis for up to one year. Should the City elect to extend the Franchise, written notice shall be provided to the Grantee before the Franchise expires.

18.2 If the Grantee has not applied for a renewal of this Franchise before it expires, Maple Valley may nevertheless require Grantee to remove or relocate any lines and appurtenances of the Grantee as is reasonably necessary for the public's health, welfare, safety, or convenience including, but not limited to, the safe operation of City streets, franchise holders, or for the construction, renewing, altering, or improving of any City street rights-of-way, or for the installation of lines and/or facilities of other franchise holders.

18.3 The Grantee shall be liable for the costs incurred in any removal or relocation of its lines and appurtenances under this section. Costs include the expense of labor and equipment. Upon expiration of this Franchise, the Grantee shall continue to be responsible for the operation and maintenance of existing facilities in the City street rights-of-way.

Section 19. Rates.

19.1 The rates charged to the water service area described in Exhibit A shall be fixed, altered, regulated, and controlled solely by the Grantee, pursuant to the limitations on such authority as set forth in state law, or any applicable regulations promulgated thereafter by the state on the subject of rates and charges for water sewer service.

Section 20. Right of Appeal.

20.1 Decisions, requirements, or approvals of the Director are binding on the parties to this Agreement. Appeals from the Director's determinations will be made by filing a complaint with the King County Superior Court.

Section 21. Severability.

21.1 This Franchise gives effect to purposes and uses which are consistent with economical and efficient services rendered in the public interest. If any provision of this Franchise or its application is determined to be invalid by a court of law, then the remaining provisions of this Franchise shall continue and remain valid unless the dominant purpose of the Franchise would be prevented or the public interest is no longer served.

Section 22. Effective Date.

22.1 This Ordinance shall be effective on _____, having been: (i) introduced to the City Council not less than five days before its passage; (ii) submitted to the City Attorney; (iii) published at least five days prior to the above-referenced effective date and as otherwise required by law; and (iv) passed at a regular meeting of the legislative body of the City of Maple Valley by a vote of at least a majority of the entire City Council on _____, 2006.

INTRODUCED:

PASSED: _____

APPROVED: _____

LAURE A. IDDINGS, Mayor

ATTEST/AUTHENTICATED:

Irvalene M. Moni, CMC, PRP City Clerk

Date: _____

APPROVED AS TO FORM:

Bruce Disend, City Attorney
Joseph Levan, Assistant City Attorney

Date: _____

I, _____, the duly qualified City Clerk of the City of Maple Valley, a Code City, situated in King County, State of Washington, do hereby certify that the foregoing is a full, true and correct copy of Ordinance No. O-06-327, an ordinance of the City of Maple Valley, entitled:

CITY OF MAPLE VALLEY, WASHINGTON
ORDINANCE NO. O-06-327

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLE VALLEY,
WASHINGTON, GRANTING A NEW FRANCHISE TO CEDAR RIVER WATER AND
SEWER DISTRICT, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN
EFFECTIVE DATE.

I further certify that said Ordinance No. O-06-327 was: (i) introduced on the _____ day of _____, 2006; (ii) submitted to the City Attorney; (iii) published on the _____ day of _____, 2006, according to law; (iv) approved by a majority of the entire legislative body of the City of Maple Valley, at a regular meeting thereof on the _____ day of _____, 2006; and (v) approved and signed by the Mayor of the City of Maple Valley on the _____ day of _____, 2006.

WITNESS my hand and official seal of the City of Maple Valley, this _____ day of _____, 2006.

, City Clerk

HONORABLE MAYOR AND CITY COUNCIL
CITY OF MAPLE VALLEY, WASHINGTON

In the matter of the application of Cedar River Water and Sewer District for a Franchise to construct, operate and maintain water mains and service lines and related facilities in, upon, over under, along, across and through the Franchise area of the City of Maple Valley, Washington:

Franchise Ordinance No. O-06-327

Acceptance:

WHEREAS, the City Council of the City of Maple Valley, Washington, has granted a Franchise to Cedar River Water and Sewer District, its successors and assigns, by enacting Ordinance No. O-06-327, dated _____, 2006; and

WHEREAS, a copy of said Ordinance granting said Franchise was received by the Cedar River Water and Sewer District on _____, 2006, from the City of Maple Valley and King County, Washington.

NOW, THEREFORE, Cedar River Water and Sewer District, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Maple Valley and King County, Washington.

IN TESTIMONY WHEREOF said Cedar River Water and Sewer District has caused this written Acceptance to be executed in its name by its undersigned _____ thereunto duly authorized on this _____ day of _____, 2006.

ATTEST:

CEDAR RIVER WATER AND SEWER
DISTRICT

By: _____

Copy received for City of Maple Valley

on _____, 2006

By: _____
City Clerk

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