

SILVER LAKE WATER-SEWER DISTRICT
SNOHOMISH COUNTY, WASHINGTON
RESOLUTION NO. 701

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE SILVER LAKE WATER & SEWER DISTRICT, SNOHOMISH COUNTY, WASHINGTON, authorizing the General Manager to Accept a Franchise Agreement with the City of Mill Creek, Washington

WHEREAS, SILVER LAKE WATER AND SEWER DISTRICT, a Washington special purpose municipal corporation ("District"), owns water and sewer facilities ("Facilities") located in the City of Mill Creek, a Washington non-charter municipal code city ("City"), and a portion of such Facilities are located within the City right-of-way as hereinafter defined; and

WHEREAS, RCW 57.08.005(3) and (5) authorize the District to conduct water and sewage throughout the District and any city and town therein, and construct and lay facilities along and upon public highways, roads and streets within and without the District; and

WHEREAS, RCW 35A.47.040 authorizes the City to grant non-exclusive franchises for the use of the public streets above or below the surface of the ground by publicly owned and operated water and sewer facilities; and

WHEREAS, the District desires to utilize City owned property that has not been formally dedicated as right-of-way, but is used by the City for such purposes; and

WHEREAS, the City wishes to grant the District access to certain property that has not been formally dedicated as right-of-way in consideration for the benefits conferred by this Franchise; and

WHEREAS, the City and the District have drafted a Franchise Agreement to provide for the operation of District Facilities within the City right-of-way and certain areas outside of formally dedicated right-of-way; and

WHEREAS, the Parties acknowledge that in 2013 the State Legislature enacted Ch.70.315 RCW which recognizes that water utilities serve a dual function of providing safe drinking water and providing water for fire protection. RCW 70.315.030 provides that water utilities are authorized to "allocate and recover the cost of fire suppression water facilities and

services from their customers as costs of complying with state laws and regulations, or from customers based on service to, benefits conferred upon, and burdens and impacts caused by various classes of customers, or both;" and

WHEREAS, SHB 1512 further authorizes cities to contract with water utilities for the provision of fire suppression water facilities and services; and

WHEREAS, the District has historically provided fire protection water services and facilities within its District boundaries; and

WHEREAS, the District is willing to continue providing fire suppression water services and facilities within the City and will continue to allocate the costs of such facilities and services to its customers within the City (1) in order to comply with state laws and regulations, (2) based on benefits conferred upon such customers, (3) based upon burdens and impacts caused by such customers, and (4) in consideration of the terms and conditions set forth in this Franchise; and

WHEREAS, the Parties wish to establish mechanisms to coordinate infrastructure planning and allocate responsibility for impacts the Parties' infrastructure maintenance and construction activities have on each other; and

WHEREAS, the Silver Lake Water and Sewer District Board of Commissioners have determined that said franchise agreement is in the best interests of all of its customers throughout the District.

BE IT RESOLVED by the Board of Commissioners of the Silver Lake Water & Sewer District, Snohomish County, Washington as follows:

1. The District accepts the franchise agreement as contained in the City of Mill Creek's Ordinance No.2014-780, which is attached as Exhibit A.
2. The District's General Manager is hereby authorized and directed to transmit to the City of Mill Creek the District's acceptance of the franchise agreement by providing the City with a copy of this Resolution.

ADOPTED by the Board of Commissioners at a regular meeting of the Silver Lake Water & Sewer District, Snohomish County, Washington this 24th day of, April 2014.

Jim Eaton
President and Commissioner

Paul Keppeler
Secretary and Commissioner

Bill Anderson
Commissioner

I CERTIFY the above to be a true and correct copy of Resolution No. 701 adopted by the Board of Commissioners of the Silver Lake Water & Sewer District this 24th day of, April 2014 as said Resolution appears in the records of the Silver Lake Water & Sewer District.

Paul Keppeler
Secretary of the Silver Lake Water & Sewer District

ORDINANCE NO. 2014-780

AN ORDINANCE OF THE CITY OF MILL CREEK GRANTING SILVER LAKE WATER AND SEWER DISTRICT A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A WATER AND SEWER SYSTEM WITHIN PUBLIC RIGHTS-OF-WAY OF THE CITY OF MILL CREEK WASHINGTON AND OTHER CITY OWNED PROPERTY THAT IS USED AS RIGHT-OF-WAY, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

WHEREAS, SILVER LAKE WATER AND SEWER DISTRICT, a Washington special purpose municipal corporation ("District"), owns water and sewer facilities ("Facilities") located in the City of Mill Creek, a Washington non-charter municipal code city ("City"), and a portion of such Facilities are located within the City right-of-way as hereinafter defined; and

WHEREAS, RCW 57.08.005(3) and (5) authorize the District to conduct water and sewage throughout the District and any city and town therein, and construct and lay facilities along and upon public highways, roads and streets within and without the District; and

WHEREAS, RCW 35A.47.040 authorizes the City to grant non-exclusive franchises for the use of the public streets above or below the surface of the ground by publicly owned and operated water and sewer facilities; and

WHEREAS, the District desires to utilize City owned property that has not been formally dedicated as right-of-way, but is used by the City for such purposes; and

WHEREAS, the City wishes to grant the District access to certain property that has not been formally dedicated as right-of-way in consideration for the benefits conferred by this Franchise; and

WHEREAS, the City and the District have drafted this Franchise Agreement to provide for the operation of District Facilities within the City right-of-way and certain areas outside of formally dedicated right-of-way; and

WHEREAS, the Parties acknowledge that in 2013 the Legislature passed SHB 1512 which recognizes that water utilities serve a dual function of providing safe drinking water and providing water for fire protection. SHB 1512 further provides that water utilities are authorized to "allocate and recover the cost of fire suppression water facilities and services from their customers as costs of complying with state laws and regulations, or from customers based on service to, benefits conferred upon, and burdens and impacts caused by various classes of customers, or both;" and

WHEREAS, SHB 1512 further authorizes cities to contract with water utilities for the provision of fire suppression water facilities and services; and

WHEREAS, the District has historically provided fire protection water services and facilities within its district boundaries; and

WHEREAS, the District is willing to continue providing fire suppression water services and facilities within the City and will continue to allocate the costs of such facilities and services to its customers within the City (1) in order to comply with state laws and regulations, (2) based on benefits conferred upon such customers, (3) based upon burdens and impacts caused by such customers, and (4) in consideration of the terms and conditions set forth in this Franchise; and

WHEREAS, the Parties wish to establish mechanisms to coordinate infrastructure planning and allocate responsibility for impacts the Parties' infrastructure maintenance and construction activities have on each other;

NOW THEREFORE, City Council of the City of Mill Creek do ordain as follows:

Section 1. Definitions.

Where used in this franchise ("Franchise") these terms have the following meanings:

A. "Capital Facilities Plan" or "Capital Improvement Plan" means any plan or program adopted by the Mill Creek City Council that identifies capital projects the City plans or anticipates undertaking. Such plans may include both fiscally restrained plans (such as the plan contemplated in RCW 36.70a.070) and plans for projects for which funding sources have not been identified. The City will provide the District with a copy of its Capital Facilities Plan(s) and Capital Improvement Plan(s) as they are adopted.

B. "City" means the City of Mill Creek, a Washington municipal corporation, and its respective successors and assigns.

C. "District" means the Silver Lake Water and Sewer District, a Washington municipal corporation, and its respective successors and assigns.

D. "Facilities" means tanks, reservoirs, meters, pipes, mains, services, valves, blow-offs, vaults, fire hydrants, risers, manholes, generators, electrical control panels, power meters, telephone connections, pressure reducing valves ("PRVs"), pump stations, meter stations, lift stations, lines, and all other necessary or convenient facilities and appurtenances thereto for the purpose of operating water and wastewater utility systems, whether the same be located over or under ground.

E. "Fire Hydrants" or "Hydrants" means the provision and maintenance of fire hydrants and related water system facilities and equipment for the delivery of water for fire suppression purposes, and the over-sizing of such water system facilities and equipment for the delivery of water for fire suppression purposes.

F. "Franchise Area" means every and all of the public roads, streets, avenues, alleys, highways and rights-of-way of the City as now or hereafter laid out, platted, dedicated or improved in District's service area within the present corporate boundaries of the City, and as such corporate boundaries may be extended within District's service area by annexation or otherwise, but shall not include private roads, streets, avenues and alleys. The Franchise Area also includes portions of City owned property that are in practice used as a road, street, avenue, alley, highway, and/or right-of-way despite the property not being legally dedicated to the City as right-of-way. However, inclusion of such non-right-of-way properties within the Franchise is limited so as not to conflict with the City's underlying property rights nor any state, local, or federal laws or regulations. The City may deny a permit for any work that the City determines conflicts with the City's underlying property rights or applicable laws or regulations. Once District Facilities are located within a portion of the Franchise Area that has not been legally dedicated to the City as right-of-way, such Facilities shall remain subject to this Franchise even if the City discontinues using the property as a road, street, avenue, alley, highway, and/or right-of-way.

G. "Major Relocation Costs" means the portion of the District's construction, design, and permitting costs that are (1) not attributable to the District's internal administrative overhead costs, (2) charged to the District by non-District personnel or independent contractors and (3) associated with moving its Facilities from one location to another and/or realignment of Facilities as mandated by the City to accommodate new City improvements within the Franchise Area. However, Major Relocation Costs do not include those costs that fall within the definition of Minor Relocation Costs.

H. "Minor Relocation Costs" means the District's costs associated with adjusting Facilities as necessitated by the City's regular maintenance, repair, and preservation of existing improvements within the Franchise Area. For example, the District's costs associated with adjusting its Facilities to accommodate repaving, repairing, or otherwise preserving existing roads and/or repairing, and replacing existing sidewalks are Minor Relocation Costs.

I. "Ordinance" means this Ordinance No. 2014-780, which sets forth the terms and conditions of this Franchise.

J. "Party" or "Parties" means the City or the District individually, or collectively as addressed in this Franchise.

Section 2. Franchise.

A. The City does hereby grant to District the right, privilege, authority and franchise to construct, install, lay, support, attach, maintain, repair, renew, replace, remove, enlarge, operate and use Facilities in, upon, over, under, along, through and across the Franchise Area for purposes of its water and sewer utility functions as defined in Title 57 RCW beginning on the Effective Date of this Franchise; provided the City's grant of the right to use the Franchise Area to the District as provided herein for its Facilities shall not be construed to require the District to provide such Facilities to the City.

B. Nothing contained in this Ordinance is to be construed as granting permission to District to go upon any other public place other than those types of public places specifically designated as the Franchise Area in this Ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case-by-case basis from the City.

C. All work performed by the District in the Franchise Area, including any City owned property outside of dedicated right-of-way, shall require a City issued permit subject to the conditions and requirements in Chapter 12.04 of the Mill Creek Municipal Code, as that chapter now exists or is hereafter amended or recodified, and subject to a finding by the City that the requested work will not unreasonably interfere with the City's use of the Franchise Area, or the use of the Franchise area by other utilities and franchise holders.

D. At all times during the term of this Franchise, District shall fully comply with all applicable federal, state, and local laws and regulations.

Section 3. Non-interference of Facilities.

A. District's Facilities shall be located, relocated and maintained within the Franchise Area so as not to unreasonably interfere with the free and safe passage of pedestrian and vehicular traffic and ingress or egress to or from the abutting property, the rights of other franchise holders, or other existing uses of the Franchise Area, and in accordance with the laws of the State of Washington. Nothing herein shall preclude District from effecting temporary road closures as reasonably necessary during construction or maintenance of its Facilities provided District receives prior City approval, which shall not be unreasonably withheld, and, provided further, District shall have the right to effect temporary road closures in the event of emergencies to maintain, repair and replace its Facilities without prior City approval but the District shall obtain City approval of such road closures as soon as reasonably possible.

B. Whenever it is necessary for District, in the exercise of its rights under this Franchise, to make any excavation, pavement disturbance, or other ground disturbance in the Franchise Area, District shall, upon completion of such disturbance, restore the surface of the Franchise Area to the City standards set forth in Mill Creek Municipal

Code Section 12.18.060, as it now exists or is hereafter amended or recodified, and at least to the same condition existing prior to any such excavation, installation, construction, relocation, maintenance or repair.

C. Survey monuments shall not be removed or destroyed without the District first obtaining the required Department of Natural Resources (DNR) permit in accordance with RCW 58.09.130 and WAC 332-120-030, and as such statute and regulation may be modified and amended. All survey monuments, which have been distributed or displaced by such work, shall be restored pursuant to all federal, state and local standards and specifications. District agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole expense.

D. If it is determined that the District has failed to restore the Franchise Area in accordance with this Section, the City shall provide the District with written notice, which shall include a description of actions the City believes necessary to restore the Franchise Area. If the Franchise Area is not restored in accordance with the City's notice within fifteen (15) days of that notice, or such longer period as may be specified in the notice, the City, or its authorized agent, may, but is not required to, restore the Franchise Area and District shall be responsible for all reasonable costs and expenses incurred by the City in restoring the Franchise Area in accordance with this Section. The rights granted to the City under this Section shall be in addition to those otherwise provided by law or in this Franchise.

Section 4. Relocation of Facilities.

A. Whenever the City causes the grading or widening of the Franchise Area or undertakes construction of storm drainage lines, lighting, signalization, sidewalk improvement, pedestrian amenities, or other public street improvements (for purposes other than those described in section 4(D) below) and such project requires the relocation of District's then existing Facilities within the Franchise Area, the City shall:

(1) Pursuant to RCW 35.21.905, or as amended, consult with District in the predesign phase of any such project in order to coordinate the project's design with District Facilities within such project's area;

(2) Provide District, at least one hundred eighty (180) days prior to the commencement of construction of such project, written notice that a project is expected to require relocation; and

(3) Provide District with reasonably accurate and specific plans and specifications for such grading, widening, or construction and a proposed new location within the Franchise Area for District's Facilities.

B. After receipt of such notice and such plans and specifications, District shall relocate such Facilities within the Franchise Area so as to accommodate such street and utility improvement project; provided, however, District may, within forty-five (45)

days after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocations. The City shall within a reasonable time evaluate such alternatives and advise District in writing whether one or more of the alternatives is suitable to accommodate work that would otherwise necessitate relocation of the Facilities. If so requested by the City, District shall submit such additional information as is reasonably necessary to assist the City in making such evaluation. The City shall give each alternative full and fair consideration. In the event the City ultimately reasonably determines that there is no other reasonable or feasible alternative, then District shall relocate its Facilities as otherwise provided in this Section 4. The City shall cooperate with District to designate a substitute location for its Facilities within the Franchise Area. City will establish a date by which Facilities will be relocated, which date will be not less than one hundred twenty (120) days after written notice to District as to the facility to be relocated. District must finish relocation of each such Facility by the date so established.

C. The cost of relocating such Facilities existing within the Franchise Area shall be paid as follows:

(1) The District will pay one-hundred percent (100%) of Minor Relocation Costs;

(2) If a City project requires Major Relocation Costs within six (6) years after the District initially constructed the relocated Facility, and the City project requiring relocation was not included within the City's Capital Facilities Plan and/or Capital Improvement Plan at the time the District constructed the Facility, then the Major Relocation Costs shall be paid fully by the City;

(3) If a City project requires Major Relocation Costs within six (6) years after the District initially constructed the relocated Facility, and the City project requiring relocation was included within the City's Capital Facilities Plan and/or Capital Improvement Plan at the time the District constructed the Facility, then the Major Relocation Costs shall be paid fully by the District;

(4) If a City project requires Major Relocation Costs more than six (6) years but less than fifteen (15) years after the District initially constructed the relocated Facility, and the City project requiring relocation was not included within the City's Capital Facilities Plan and/or Capital Improvement Plan at the time the District constructed the Facility, then the City shall pay fifty percent (50%) of the Major Relocation Costs and the District shall pay the remaining costs;

(5) If a City project requires Major Relocation Costs more than six (6) years but less than fifteen (15) years after the District initially constructed the relocated Facility, and the City project requiring relocation was included within the City's Capital Facilities Plan and/or Capital Improvement Plan at the time the District constructed the Facility, then the Major Relocation Costs shall be paid fully by the District;

(6) If the relocation occurs more than fifteen (15) years after the District initially constructed such Facility, then the relocation shall be at the District's sole cost.

D. Whenever any person or entity, other than the City, requires the relocation of District's Facilities to accommodate the work of such person or entity within the Franchise Area, or whenever the City requires the relocation of District's Facilities within the Franchise Area for the benefit of any person or entity other than the City, then District shall have the right as a condition of such relocation to require such person or entity to:

(1) Make payment to District at a time and upon terms acceptable to the District for any and all costs and expense incurred by the District in the relocation of District Facilities; and

(2) Protect, defend, indemnify and save the District harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of District Facilities, to the extent such injury or damage is caused by the negligence or willful misconduct of the person or entity requesting the relocation of District Facilities or other negligence or willful misconduct of the agents, servants or employees of the person or entity requesting the relocation of District Facilities.

E. For the purpose of this Section 4, a project or improvement is considered to be caused by the City (as described in 4(A) above) if it is permitted by the City and both of the following conditions exist:

(1) The City is lead agency for the project or improvement, and

(2) The City is responsible for over 50% of the overall costs of said improvement or project, which 50%, if applicable, includes any grant money received by the City from another entity for the project.

F. In the event the District's use of the Franchise Area requires relocation of another franchise holder's improvements and/or facilities, the District will be fully responsible for negotiating any cost sharing arrangements with the other franchise holder. The City will not bear any costs for such relocations and reserves the right to deny a permit to perform the work if the District is unable to make arrangements to avoid interference with existing improvements and uses within the Franchise Area.

Section 5. Planning Coordination.

A. The Parties agree to participate in the development of, and reasonable updates to, the other Party's planning documents as follows:

(1) For the District's service area within the City limits, the District will participate in a cooperative effort with the City to develop City's Comprehensive Plan Utilities Element that meets the requirements described in RCW 36.70A.070(4).

(2) The District will participate in a cooperative effort with the City to ensure that the Utilities Element of City's Comprehensive Plan is accurate as it relates to the District's operations and is updated to ensure continued relevance at reasonable intervals.

(3) The District shall submit information related to the general location, proposed location, and capacity of all existing and proposed Facilities within the City as requested by the City within a reasonable time, not exceeding sixty (60) days from receipt of a written request for such information, provided that such information is in the District's possession, or can be reasonably developed from the information in the District's possession.

(4) The City will provide information relevant to the District's operations within a reasonable period of written request to assist the District in the development or update of District's Comprehensive Water or Wastewater Comprehensive Plan(s), provided that such information is in the City's possession, or can be reasonably developed from the information in the City's possession.

B. District and City shall each assign a representative whose responsibility shall be to coordinate planning for capital improvement plan projects including those that involve undergrounding. At a minimum, such coordination shall include:

(1) For the purpose of planning, the District and the City shall provide each other with a copy of their respective current adopted Capital Improvement Plan annually and upon request by the other party.

(2) By February 1st of each year, District shall provide the City with a schedule of the District's planned capital improvements which may affect the rights-of-way for that year.

(3) By February 1st of each year, City shall provide the District with a schedule of City's planned capital improvements which may affect the rights-of-way for that year including but not limited to street overlays and repairs, storm drainage improvements and construction, and all other rights-of-way activities that could affect District capital improvements and infrastructure.

(4) By March 1st of each year, City and District shall meet to discuss and plan for upcoming operations, repairs, upgrades, and other issues that are of mutual concern.

(5) The District shall meet with the City, and other franchisees and users of the Franchise Area, as necessary, to schedule and coordinate construction activities.

(6) All construction locations, activities, and schedules shall be coordinated to minimize public inconvenience, disruption or damages, and consistent with the purpose and requirements of Chapter 12.18 of the Mill Creek Municipal Code as it now exists or is hereafter amended or recodified.

(7) The City and the District agree to cooperate in the planning and implementation of emergency operations response procedures.

(8) Without charge to either Party, both Parties agree to provide each other with drawings, plans, maps and records that show the vertical and horizontal location of its facilities within rights-of-way, measured from the center line of the rights-of-way. Maps shall be provided in the digital electronic format used by the City or the District unless the Parties agree on another format.

(9) By March 1st of each year, the District will provide the City with a record of the fire hydrants that the District inspected and/or performed maintenance on in the prior calendar year.

C. The City reserves the right to place restrictions on pavement disturbance pursuant to Chapter 12.18 of the Mill Creek Municipal Code as that Chapter exists now or is hereafter amended.

Section 6. Indemnification.

A. District shall indemnify, defend and hold the City, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of District or its agents, servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted District in this Franchise; provided, however, such indemnification shall not extend to injury or damage to the extent caused by the negligence or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.

B. City shall indemnify, defend and hold the District, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of City or its agents, servants, employees, contractors, subcontractors or assigns in the City's performance, administration and operation of this Franchise or in exercising the rights granted City in this Franchise; provided, however, such indemnification shall not extend to injury or

damage to the extent caused by the negligence or willful misconduct of the District, its agents, officers, employees, volunteers or assigns.

C. In the event any such claim or demand be presented to or filed with the District or the City arising out of or relating to the acts or omissions in whole or in part of the other party, the party shall promptly notify the other party thereof, and the notified party shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand.

D. Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of City and District, their officers, employees and agents, District's liability hereunder shall be only to the extent of District's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the parties' waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification.

Section 7. Default.

If the District fails to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon the District a written order to so comply within thirty (30) days from the date such order is received by the District. If the District is not in compliance with this Franchise after expiration of said thirty (30) day period, the City may act to remedy the violation and may charge the costs and expenses of such action to District. The City may act without the thirty (30) day notice in case of an emergency. The City may in addition, by ordinance adopted no sooner than five (5) days after notice of the City Council hearing (at which District will have an opportunity to be heard) on the impending ordinance, declare an immediate forfeiture of this Franchise, provided, however, if any material failure to comply with this Franchise by District cannot be corrected with due diligence within said thirty (30) day period, the District's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control, in which case the time within which the District may so comply shall be extended for such time as may be reasonably necessary and so long as the District commences promptly and diligently to effect such compliance, provided good faith dispute does not exist concerning such compliance.

In addition to other remedies provided herein, if the District is not in compliance with requirements of the Franchise, and if a good faith dispute does not exist concerning such compliance, the City may place a moratorium on issuance of pending District right-of-way use permits until compliance is achieved.

Section 8. Non-exclusive Franchise.

This Franchise is not and shall not be deemed to be an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further

franchises over, upon, and along the Franchise Area, which do not interfere with District's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Section 9. Franchise Term.

This Franchise shall have an initial term of twenty (20) years from its Effective Date. The Franchise shall automatically renew twenty (20) years after the Effective Date for an additional ten (10) year term unless either party provides the other party a written demand to renegotiate or terminate the Franchise no later than nineteen (19) years after the Effective Date.

Section 10. Franchise Fee.

As compensation to the City for its costs of creating and administering this Franchise and for the consideration conferred to the District for which it was not legally entitled to in the absence of this Franchise, the District shall pay to the City a Franchise Application Fee of Five Thousand Dollars (\$5,000.00) within 30 days of the Effective Date of this Franchise and an annual Franchise Administration Fee equal to One Thousand Dollars (\$1000) payable within thirty (30) days of each annual anniversary of the Effective Date of this Franchise.

Section 11. Non-assumption.

In consideration of the District's payment of the benefits conferred to the City by this Franchise, the District's acceptance of the burden to pay for hydrant costs as further provided in Section 12 herein, and the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise and to forbear its statutory authority pursuant to chapter 35.13A RCW or other statutes to attempt to assume jurisdiction over the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the term of this Franchise. The City's agreement and forbearance includes not facilitating or cooperating with any other city or town to attempt pursuant to RCW 35.13A.060 or as such statute may be amended or superseded to assume jurisdiction over the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the term of this Franchise; provided, this provision shall not be construed to prohibit or prevent the City from responding to requests for public records related to such attempts by other cities or towns or from performing other duties or obligations required by law.

Section 12. Fire Hydrant Costs.

A. As partial consideration for the rights granted to the District under this Franchise, the District agrees to continue to be responsible for the cost to provide and maintain fire suppression water services and facilities, including Fire Hydrants, within

the Franchise Area, whether installed by the District or by third parties as part of the District's water system. The fire suppression facilities shall be properly maintained by the District, and fire hydrants shall be checked and serviced on a regular basis for proper operation in accordance with AWWA Standard C502-05 or subsequent updates. The District shall work with property owners and the City to keep vegetation from blocking access to hydrants.

B. In the event a court of competent jurisdiction determines the District may not take responsibility to pay for fire suppression water services and facilities, including the provision of Fire Hydrants, or legislative action prevents the District from accepting responsibility for the cost to provide and maintain fire suppression water services and facilities, including Fire Hydrants, the District's obligation to pay for the provision and maintenance of such services and facilities under this Section 13 shall be terminated in accordance with and to the degree required to comply with such court or legislative action. In the event the District's obligation to pay for the provision and maintenance of fire suppression water services and facilities is so terminated, both Parties shall have the right within ninety (90) days of any such court determination or legislative action to request Franchise amendments to take effect no sooner than the District's obligation to pay is terminated. In the event the Parties do not reach agreement on the amendment of the Franchise within one hundred eighty (180) days of a Party's request to amend the Franchise, this Franchise shall terminate without further action by the Parties.

C. The District shall not be responsible to provide fire protection and fire suppression services to the public within the Franchise Area. Further, the District does not represent or warrant sufficient water pressure or flow from fire hydrants for the purposes of fire suppression and protection.

Section 13. Compliance with Codes and Regulations.

A. The rights, privileges and authority herein granted are subject to and governed by this ordinance and all other applicable City ordinances and codes, as they now exist or may hereafter be amended, provided the City shall not unreasonably affect or modify any portion of this Franchise without District's written approval. Nothing in this ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public. Any location, relocation, erection or excavation by District shall be performed by District in accordance with applicable federal, state and city rules and regulations, including the City Public Works Policies and Pre-approved Plans, and any required permits, licenses or regulatory fees, and applicable safety standards then in effect or any Memorandum of Understanding with District.

B. In the event that any territory served by District is annexed to the City after the effective date of this Franchise, this Franchise shall be deemed to be the new agreement required to be granted to a franchisee in annexed territory by RCW 35A.14.900 for whatever period of time is then required under that statute or the remaining time left under this Franchise for the Franchise Area, whichever is longer.

Such territory shall then be governed by the terms and conditions contained herein upon the effective date of such annexation.

Section 14. Location of Facilities and Equipment.

With the exception of components that are traditionally installed above ground such as fire hydrants, blow-offs, vault lids, risers, manhole covers, pump stations, lift stations, generators, electrical control panels, power meters, telephone connections, and utility markers, all Facilities and equipment to be installed within the Franchise Area shall be installed underground; provided, however, that such Facilities may be installed above ground if so authorized by the City, which authorization shall not be unreasonably withheld, conditioned or delayed, consistent with this Franchise, the provisions of the City's Land Use Code, and applicable development pre-approved plans.

Section 15. Maintenance of Facilities and Equipment.

District Facilities and equipment shall be maintained and repaired so that they do not functionally interfere with City or any other franchisee's operations. Likewise, all District Facilities and equipment located in an area that is visible to the public shall be maintained in accordance with design and appearance standards approved by the City. This maintenance duty includes, but is not limited to, maintaining the appearance of paint, removing graffiti, and repairing any visible external damage to the Facilities and equipment.

Section 16. Record of Installations and Service.

With respect to excavations by District and the City within the Franchise Area, District and the City shall each comply with its respective obligations pursuant to chapter 19.122 RCW, and as such statute may be modified and amended, and any other applicable state law.

Upon written request of the City, District shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall only be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

Upon written request of District, the City shall provide District with the most recent update available of any plan of potential improvements to its improvements located within the Franchise Area; provided, however, any such plan so submitted shall only be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

As-built drawings of the location of any Facilities placed by District in any street, alley, avenue, highway, easement, etc., shall be made available to the City within ten (10) working days of request.

Section 17. Shared Use of Excavations.

A. District and the City shall exercise best efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other Party and other utilities within the Franchise Areas informed of its intent to undertake such construction work. District and the City shall further exercise best efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

B. If at any time, or from time to time, either District, the City, or another franchisee, shall cause excavations to be made within the Franchise Area, the Party causing such excavation to be made shall afford the others, upon receipt of a written request to do so, an opportunity to use such excavation, provided that:

(1) No statutes, laws, regulations or ordinances prohibit or restrict the proximity of other utilities or facilities to District's Facilities installed or to be installed within the area to be excavated;

(2) Such joint use shall not unreasonably delay the work of the Party causing the excavation to be made;

(3) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties. The Parties shall each cooperate with other utilities in the Franchise Area to minimize hindrance or delay in construction.

(4) The party performing an excavation shall give the other party and other utilities with franchises in the City written notice at least one hundred eighty (180) days prior to the commencement of the excavation. The one-hundred-eighty (180) day notice requirement does not apply to emergency repairs and may be eliminated or shorted in situations in which the City determines that doing so would be in the best interest of public health, safety, or welfare.

Section 18. Insurance.

District shall maintain in full force and effect throughout the term of this Franchise, a minimum of Two Million Dollars (\$2,000,000.00) liability insurance for property damage and bodily injury.

The City shall be named as an additional insured on any policy of liability insurance obtained by District for the purpose of complying with the requirements of this Section.

In satisfying the insurance requirement set forth in this section, District may self-insure against such risks in such amounts as are consistent with good utility practice. District shall provide the City with sufficient written evidence, the sufficiency of which shall be determined at the reasonable discretion of the City, upon request, that such insurance (or self-insurance) is being so maintained by District. Such written evidence shall include, to the extent available from District's insurance carrier, a written certificate of insurance with respect to any insurance maintained by District in compliance with this Section.

Section 19. Vacation of Franchise Area.

If the City determines to vacate any right-of-way or surplus non-right-of-way which is part of the Franchise Area where District Facilities are located or maintained, any ordinance vacating such right-of-way or disposing of such non-right-of-way shall provide and condition such vacation or disposal on District obtaining at no cost to District a permanent non-exclusive easement at least fifteen (15) feet wide, to the extent available, in such vacated right-of-way or disposed property for the construction, operation, maintenance, repair and replacement of its facilities located and to be located in such vacated right-of-way or disposed property.

Section 20. Assignment.

All of the provisions, conditions, and requirements herein contained shall be binding upon District, and no right, privilege, license or authorization granted to District hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold, condition or delay, provided that a merger or consolidation of District with or into another Title 57 water-sewer district shall not be considered an assignment for the purposes of this provision and shall not be subject to the City's approval. Notwithstanding the foregoing, District may assign this Franchise to an affiliate, parent or subsidiary or as part of any corporate financing, reorganization or refinancing which does not require assignment to any but an affiliate, parent or subsidiary without the consent of, but upon notice to, the City.

Section 21. Notice.

Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any Party (collectively, "notices") shall be in writing and shall be validly given or made to another Party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United States Mail, certified, registered, or express mail with postage prepaid, or if sent by facsimile

transmission with electronic confirmation. If such notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given one (1) business day after the deposit thereof with such delivery service. If such notice is mailed as provided herein, such shall be deemed given three (3) business days after the deposit thereof in the United States Mail. If such notice is sent by facsimile transmission, it shall be deemed given at the time of the sender's receipt of electronic confirmation. Each such notice shall be deemed given only if properly addressed to the Party to whom such notice is to be given as follows:

To City: City Clerk
 City of Mill Creek
 15728 Main St
 Mill Creek, WA 98012
 Phone: (425) 745-1891
 Fax: (425) 745-1891

With copy to: City Attorney
 15728 Main St
 Mill Creek, WA 98012

To District : General Manager
 Silver Lake Water and Sewer District
 PO Box 13888
 Mill Creek, WA 98082
 Phone: (425) 337-3647
 Fax: (425) 337-4399

With copy to: Silver Lake Water and Sewer District
 Inslee, Best, Doezie & Ryder, P.S.
 777 108th Avenue Northeast, Suite 1900
 Bellevue, WA 98004

Any Party may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner aforesaid to the other Party.

Section 22. Severability.

If any term, provision, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise, which shall continue in full force and effect.

Section 23. Non-Waiver.

The failure of either Party to enforce any breach or violation by the other Party or any provision of this Franchise shall not be deemed to be a waiver or a continuing waiver

by the non-breaching Party of any subsequent breach or violation of the same or any other provision of this Franchise.

Section 24. Alternate Dispute Resolution.

If the Parties are unable to resolve disputes arising from the terms of this Franchise, prior to resorting to a court of competent jurisdiction, the Parties shall submit the dispute to mediation or other non-binding alternate dispute resolution process agreed to by the Parties. Unless otherwise agreed upon between the Parties or determined herein, the cost of that process shall be shared equally by the Parties.

Section 25. Governing Law/Venue.

This Franchise shall be governed by the laws of the State of Washington. Any suit to enforce or relating to this Agreement shall only be filed in Snohomish County Superior Court, Snohomish County, Washington.

Section 26. Entire Agreement.

This Franchise constitutes the entire understanding and agreement between the Parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the Parties upon execution and acceptance hereof.

Section 27. Amendment.

This Franchise may be amended only by written instrument, signed by both Parties, which specifically states that it is an amendment to this Franchise, and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 6 above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by District of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement or document specifically:

- (1) References this Franchise; and
- (2) States that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document that does not comply with subsections (a) and (b) referenced immediately above, the provisions of this Franchise shall control.

Section 28. Directions to City Clerk.

The City Clerk is hereby authorized and directed to forward certified copies of this ordinance to the District as set forth in this ordinance. District shall have thirty (30) days from the receipt of the certified copy of this ordinance to accept in writing the terms of the Franchise granted to the District by this ordinance.

Section 29. District Acceptance of Franchise.

District shall have no rights under this Franchise nor shall District be bound by the terms and conditions of this Franchise unless District shall, within thirty (30) days after the effective date of the ordinance, file with the City its written acceptance of this Franchise.

Section 30. Effective Date of Ordinance.

This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

Section 31. Effective Date of Franchise.

The terms and conditions of this ordinance shall not be binding on the City and the District unless the District Board of Commissioners within thirty (30) days of the effective date of this ordinance adopts a resolution accepting this Franchise, and the date of the adoption of such resolution by the District Board of Commissioners shall be the effective date ("Effective Date") of the Franchise.

Section 32. No Third Party Beneficiaries.

This Franchise is made for the sole benefit of the Parties and is not intended to benefit any other person or entity.

PASSED by the City Council and APPROVED by the Mayor this 8th day of April, 2014.

APPROVED:



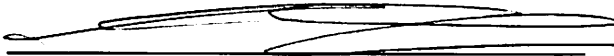
MAYOR PAM PRUITT

ATTEST/AUTHENTICATED:



CITY CLERK, KELLY CHELIN

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:



SHANE MOLONEY

FILED WITH THE CITY CLERK: 4/8/14
PASSED BY THE CITY COUNCIL: 4/8/14
PUBLISHED: 4/13/14
EFFECTIVE DATE: 4/18/14
ORDINANCE NO. 2014-780

State of Washington)
) ss.
County of Snohomish)

I, Kelly M. Chelin, do hereby certify that the following Ordinance was approved at the April 8, 2014 meeting:

ORDINANCE #2014-780: AN ORDINANCE OF THE CITY OF MILL CREEK GRANTING SILVER LAKE WATER AND SEWER DISTRICT A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A WATER AND SEWER SYSTEM WITHIN PUBLIC RIGHTS-OF-WAY OF THE CITY OF MILL CREEK WASHINGTON AND OTHER CITY OWNED PROPERTY THAT IS USED AS RIGHT-OF-WAY, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

A true and correct copy of Ordinance #2014-780 is attached.

DATED this 10th day of April, 2014.



A handwritten signature in black ink that reads "Kelly M. Chelin".

Kelly M. Chelin
Title: City Clerk for the City of Mill Creek
Notary Public in and for the State of Washington
Residing at Lake Stevens, Washington.
My Commission Expires: 11-19-17.

THE STATE OF MICHIGAN
DEPARTMENT OF HEALTH
DIVISION OF PUBLIC HEALTH
COMMUNITY HEALTH SERVICES
11-19-11

[Handwritten signature]
[Faint typed text]





Silver Lake Water & Sewer District

April 25, 2014

City of Mill Creek
Mr. Ken Armstrong
City Manager
15728 Main Street
Mill Creek, WA. 98012

Re: Mill Creek – Silver Lake Water and Sewer District Franchise

Dear Mr. Armstrong:

On April 24, 2014, the Silver Lake Water and Sewer District Board of Commissioners adopted Resolution 701 (Resolution) authorizing the District General Manager to accept the Franchise Agreement with the City of Mill Creek as found in Mill Creek Ordinance 2014-780 (Ordinance) by presenting to the City a copy of the Resolution, which is enclosed. In accordance with the terms of the Ordinance the effective date of the Franchise is April 24, 2014. As required by Section 10 Franchise Fee of the Ordinance please find enclosed a District check in the amount of \$5000.00 in payment of the Franchise Application Fee.

If you have any questions or comments in this regard please contact me.

A handwritten signature in black ink, appearing to read "Patrick M. Curran". The signature is fluid and cursive, with a long horizontal stroke at the end.

Patrick M. Curran
General Manager