

## ORDINANCE NO. 1210

### AN ORDINANCE OF THE CITY OF LAKE FOREST PARK GRANTING LAKE FOREST PARK WATER DISTRICT THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT AND MAINTAIN, REPAIR, REPLACE, OPERATE IN, UPON, OVER, UNDER, ALONG AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF PROVIDING WATER UTILITY SERVICES AND PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE

---

**WHEREAS**, Lake Forest Park Water District, a Washington special purpose municipal corporation (the "District"), owns water facilities located in the City of Lake Forest Park, a Washington municipal code city (the "City"), and portions of the District's facilities are located within the City right-of-way as hereinafter defined; and

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

**WHEREAS**, the current franchise between the City and the District expired September 8, 2018, an extension of the franchise expired March 18, 2019, and the City and the District have prepared this replacement franchise to provide for the maintenance and operation of District facilities located within the City right-of-way; and

**WHEREAS**, the parties acknowledge that the Washington State legislature adopted chapter 70.315 RCW to "clarify the authority of water purveys to provide fire suppression water facilities and services and to recover the costs of those facilities and services;" and

**WHEREAS**, the Parties also acknowledge the Washington Supreme Court's ruling in Burns v. Seattle, 161 Wn.2d 129 (2007), wherein Seattle City Light ("SCL") entered into franchise agreements with certain cities and agreed to pay the cities a percentage of SCL's revenues derived from retail power sales to SCL customers within such cities in consideration of the cities' agreement not to exercise their statutory authority to establish a competing municipal electrical utility during the term of the franchise; and the District is willing to pay the City a percentage of the District's revenues derived from its retail water sales to District customers located within City's corporate limits in consideration of the City's agreement not to exercise, and to forebear, its statutory authority pursuant to Chapter 35.13A RCW 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;

**NOW THEREFORE, CITY COUNCIL OF THE CITY OF LAKE FOREST PARK DO ORDAIN AS FOLLOWS:**

Section 1. Definitions.

Where used in this franchise these terms have the following meanings:

1.1. "District" means Lake Forest Park Water District, a Washington special purpose municipal corporation, and its respective successors and assigns.

1.2. "City" means the City of Lake Forest Park, a municipal code city corporation of the State of Washington, and its respective successors and assigns.

1.3. "Franchise" means this Ordinance and any amendments or modifications hereto.

1.4. "Franchise Area" means any, every and all of the roads, streets, avenues, alleys, highways and rights-of-way of the City as now laid out, platted, dedicated or improved in the District's service area within the present corporate boundaries of the City, and as such corporate boundaries may be extended within the District's service area by annexation or otherwise. Franchise Area shall exclude areas covered by District easements.

1.5. "Facility" or "Facilities" means the District's tanks, meters, pipes, mains, services, valves, blow-offs, vaults, risers, manholes, generators, electrical control panels, power meters, pressure reducing valves ("PRVs"), pump stations, lift stations, meter stations, lines, fire hydrants and all necessary or convenient facilities and appurtenances thereto, whether the same be located over or under ground, for the operation of the District's water utility systems.

1.6. "Fire Hydrants" or "Hydrants" means the installation, operation 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.

1.7. "Ordinance" means this Ordinance #1210 which sets forth the terms and conditions of this Franchise.

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

1.9. "Revenue" means income from all sources. "Net Revenue" means utility service, income, net of discounts and adjustments, received by the District from the sale of metered water to direct retail customers whose connections to the District's water system are located within the City. Net Revenue shall not include: capital improvement fees regardless of how charged, receipts for Franchise Fees, late fees; administrative charges; shut-off and reactivation fees; impact or mitigation fees; any type of connection charges, general facilities charges, or local facilities charges; local improvement District and utility local improvement District assessments and payments; grants; contributed assets (contributions in aid of construction); loans; income from legal settlements of any kind; income from telecommunication leases or licenses; income from real property or from real property sales; income from the sale of surplus equipment, fuel, tools, vehicles or provision of non-utility services to other parties; interest income; penalties; hydraulic- modeling fees; water system extension agreement fees and charges; income from street lights; labor, equipment and materials charges; or any other fees and charges not derived from the retail sales of water services.

## Section 2. Franchise.

2.1. Facilities within Franchise Area. The City does hereby grant to the District, subject to the terms and conditions in this Franchise, the right, privilege, authority and franchise to construct, support, attach, and connect Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, through and across the Franchise Area for purposes of its water utility service pursuant to the District's authority set forth in Title 57 RCW.

2.2. Permission Required to Enter onto Other City Property. Nothing contained in this Ordinance shall be construed as granting permission to the District to go upon any other public place other than that specifically designated as the Franchise Area in this Ordinance.

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

## Section 3. Non-interference of Facilities.

3.1. The District's Facilities located, relocated and maintained within the Franchise Area shall not interfere with the free and safe passage of pedestrian and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington. Nothing herein shall preclude the District from effecting temporary road closures as reasonably necessary during construction or maintenance of its Facilities provided the District receives prior written approval from the City, which approval shall not be unreasonably withheld. Whenever it is necessary for the District, in the exercise of its rights under this Franchise, to make any excavation in the Franchise Area, the District shall, upon

completion of such excavation, restore the surface of the Franchise Area to the specifications in the King County 2016 Road Design and Construction Standards, or as otherwise amended by the City, and in accordance with standards of general applicability imposed by City ordinance or permit conditions.

3.2. If the District should fail to leave any portion of any Franchise Area so excavated in a condition that meets the City's specifications, the City may after notice of not less than ten (10) calendar days to the District, which notice shall not be required in case of an emergency, order any and all work considered necessary to restore to the required specifications that portion of the Franchise Area so excavated, and the District shall pay to the City the costs of such work; which shall include among other things the overhead expense of the City in obtaining completion of said work.

3.3. Any surface or subsurface failure occurring during the term of this Franchise and caused by any excavation or other activity by the District, if determined by the City to be an imminent threat to public health and safety, shall be immediately repaired by the District to the City's specifications within one (1) day of notice by the City to the District to repair such failure. Repair work shall be done pursuant to traffic and pedestrian control plans prepared by the District and approved by the City. In the event of a surface or subsurface failure the City determines is not an imminent threat to public health and safety, the District shall repair such failure within five (5) days of notice by the City to the District to repair such failure, pursuant to traffic and pedestrian control plans prepared by the District and approved by the City. The District shall be responsible to maintain traffic and pedestrian control until the failure is repaired at the District's sole cost and expense. If the District fails to timely repair any failure as provided herein, the City shall have the right to perform the work necessary to restore the damaged area to a safe and acceptable condition and the District shall pay the costs of such work to the City.

3.4. The City reserves the right to require full width overlay for five (5) years following a street overlay or improvement project that includes new pavement. In addition, and regardless of the time elapsed since a street overlay or improvement project has occurred, the City reserves the right to require the District to follow the same road and pavement restoration standards that other parties (developers, contractors, etc.) are required to follow. The District shall be given written notice at least ninety (90) days prior to the commencement of such project. Provided; the City may grant an extension of an additional 270 days depending on project complexity and permitting requirements.

#### Section 4. Relocation of Facilities.

4.1. Both Parties agree that they serve the same citizens and desire to minimize costs to both Parties when construction takes place in the right-of-way. 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. Whenever the City causes the grading or widening of any portion of the Franchise Area or undertakes construction of any storm drainage line, lighting, signalization, sidewalk improvement, pedestrian amenities, or other public street improvement for purposes other than those described in Section 4.5 below ("City Project"), the City shall attempt to avoid the need for the relocation of the District's then existing Facilities wherever feasible; provided, however, interconnection facilities with adjacent purveyors, water storage facilities and any water production facility within the District's wellfields are exempt from relocation. If the City Project requires the relocation of the District's then existing Facilities that are not exempt from relocation within the Franchise Area, the City shall:

a. For the relocation of small Facilities such as fire hydrants and blow off valves, the cost of relocation of which is estimated at less than \$50,000, provide the District at least ninety (90) days written notice to require relocation. Provided, the City shall grant additional days for completion when the District demonstrates that factors outside the District's control (e.g., obtaining a permit from WSDOT) prevent the District from relocating the Facility within the ninety-day notice period.

b. For the relocation of Facilities, the cost of relocation of which is estimated at \$50,000 or greater:

i. Provide the District, at least one hundred and eighty (180) days prior to the commencement of the City Project, written notice that a project is expected to require relocation; provided, the City may grant an extension up to 540 days depending on project complexity and permitting requirements, and

ii. Provide the District with reasonable plans and specifications for the City project grading, widening, or construction and a proposed new location within the Franchise Area for the District's Facilities.

4.2. After receipt of such notice and such plans and specifications, the District shall relocate the District Facilities within the Franchise Area so as to accommodate the City Project; provided, however, the District may, within twenty (20) 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 twenty (20) days after receipt of written alternatives from the District evaluate such alternatives and advise the District in writing whether one or more of the alternatives is suitable to accommodate the Project that would otherwise necessitate relocation of the Facilities. If so, requested by the City, the District shall submit such additional information as is reasonably necessary to assist the City in making its evaluation. The City shall give each alternative full and fair consideration. In the event the City ultimately determines that there is no reasonable or feasible alternative, then the District shall relocate its Facilities as

otherwise provided in Section 4.1. The City shall cooperate with the District to designate a substitute location for its Facilities within the Franchise Area. The City will establish a date by which Facilities will be relocated, which date will be not less than ninety (90) days after the final written confirmation of the substitute or agreed upon new location for the District's Facilities; provided, the City may grant an extension up to 500 days depending on complexity and permitting requirements. The District must finish relocation of each such Facility by the date so established.

4.3. All costs associated with the relocation of such Facilities existing within the present limits of the City shall be paid as follows:

a. if the relocation occurs within six (6) years after the District initially completed construction of such Facility, then the relocation shall be at the City's sole cost;

b. if the relocation occurs more than six (6) years but within fifteen (15) years after the District initially completed construction of such Facility, then the City shall pay fifty percent (50%) of the cost of such relocation and the District shall pay the remaining fifty percent (50%); and

c. if the relocation occurs more than fifteen (15) years after the District initially completed construction of such Facility, then the relocation shall be at the District's sole cost.

d. If the City requires the relocation of major facilities defined as pressure reducing valve stations, zone metering vaults, large diameter transmission water main (over 10") and any water main that is encased, then the City would pay fifty percent (50%) of relocation costs unless facility age as defined in 3.a. triggers a higher contribution percentage by the City.

4.4. Whenever any person or entity, other than the City ("Third-Party"), requires the relocation of District Facilities to accommodate the work of the Third-Party within the Franchise Area, or whenever the City requires the relocation of District Facilities within the Franchise Area for the benefit of any Third-Party, the District shall have the right as a condition of such relocation to require the Third-Party to:

a. Make payment to the 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 the affected Facilities; and

b. Protect, defend, indemnify and hold 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 the affected Facilities, to the extent such injury or damage is caused by the negligence or willful misconduct of the Third-Party requesting relocation of

the affected Facilities or other negligence or willful misconduct of the agents, servants or employees of the Third-Party requesting relocation of the affected Facilities.

4.5. If the City requires a Third-Party to construct anything for the benefit of, and ownership by, the City, Section 4.1 shall apply.

4.6. The District recognizes the need for the City to maintain adequate width for installation and maintenance of utilities such as, but not limited to, storm drainage and telecommunication facilities. Thus, the City reserves the right to maintain reasonable clear zones within the public right-of-way for installation and maintenance of said utilities. The clear zones for each right-of-way segment shall be noted and conditioned with the issuance of each right-of-way permit to the District. If adequate clear zones are unable to be achieved on a particular right-of-way, the District shall locate in an alternate right-of-way, obtain easements from private property owners, or propose alternate construction methods, which maintain and/or enhance the existing clear zones, with costs for any such relocation being paid as set out in Section 4.1 above. Provided, the City shall not require the relocation of then existing Facilities for the purposes of a change in clear zone or for the creation of adequate clear zones for the installations of another Third-Party user of the right-of-way in a non-City project, after the issuance of a right-of-way permit to the District.

4.7. For the purpose of Section 4, a project or improvement is considered to be a City Project when contracts for the project are being entered into by the City, permits are being obtained by the City, or the City pays over fifty percent (50%) of the project's cost.

4.8. Whenever the City causes the grading or widening of any portion of the Franchise Area or undertakes construction of any storm drainage line, lighting, signalization, sidewalk improvement, pedestrian amenities, or other public street improvement for purposes other than those described above and such project does not require the relocation of the District's then existing Facilities within the Franchise Area, but the District Facilities within the Franchise Area are older than fifty (50) years, the District shall evaluate the affected Facilities for replacement at its sole cost and discretion.

#### Section 5. Indemnification.

5.1. The 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 the District or its agents, servants, employees, contractors,

subcontractors or assigns in the construction, operation or maintenance of Facilities or in exercising the rights granted the 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.

5.2. The 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 the 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 the City; 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.

5.3. In the event any such claim or demand is presented to or filed with either Party, that Party shall promptly notify the other Party to this Franchise and the Party so notified shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand, or defend the same at its sole cost and expense, by attorneys of its own election.

#### Section 6. Default.

If either Party shall fail to comply with any of the provisions of this Franchise, the other Party may serve upon the defaulting Party a written notice to so comply within ten (10) days. If the other Party is not in compliance with the terms of this Franchise after expiration of the ten (10) day period, the notifying Party shall institute the dispute resolution provisions provided for in Section 20.6 herein, provided if the District is not in compliance with this Franchise after such ten (10) day period, the City may act to remedy the alleged violation and may charge the costs and expenses of such action to the District. The City shall also have the right to act without providing the District a ten (10) day notice in case of an emergency. If the Parties are unable to resolve disputes arising from or related to "the performance of this Franchise through the dispute resolution provisions herein, both Parties shall have the right, upon thirty (30) days' notice to the other Party, to terminate and declare the Franchise forfeited. The Parties shall also have the right to seek relief in a court of competent jurisdiction.

#### Section 7. 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, under, upon, along and across the Franchise Area, which do not interfere with the 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 8. Franchise Term.

This Franchise shall remain in full force and effect from August 23, 2020 until December 31, 2025. On January 1, 2026 and January 1, 2031, the term shall automatically be extended for an additional five (5) years, unless either the District or the City has issued the other Party written notice of non-renewal prior to any such renewal date. If notice of non-renewal is issued, this Franchise shall terminate twelve (12) months after the non-renewal notice is received. Notwithstanding the above, either Party may terminate this agreement with twelve (12) months written notice at any time, provided that such notice cannot be given prior to January 1, 2023. The parties agree that if the franchise has not been terminated previously, negotiations for a new franchise will begin at least eighteen (18) months prior to December 31, 2035, which is the last day of the second automatic extension.

#### Section 9. Consideration.

As a part of and for the term of this Franchise Agreement the City and the District agree as follows:

9.1. Non-Assumption. In consideration of (i) the District's acceptance of the burden to pay for hydrant costs as further provided in Section 9.2 herein, (ii) the District's waiver and release of any claim it may have for reimbursement from the City for hydrant costs incurred prior to the Effective Date of this Franchise as further provided in Section 9.3 herein, (iii) the District's payment of a Franchise Fee to the City as provided in Section 9.4, and (iv) the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise, and to forebear, its statutory authority pursuant to Chapter 35.13A RCW or other statutes to assume jurisdiction over the District or any District responsibilities, property, facilities, equipment or utility customers located within the City's corporate limits during any term of this Franchise.

#### 9.2. Hydrant Costs.

a. During the term of this Franchise, the District agrees to be responsible for the operation, maintenance and cost of Fire Hydrants within the Franchise Area, including costs for Fire Hydrant relocation as determined pursuant to Section 4 herein, whether installed by the District or by third-parties on behalf of the District.

b. Should a court of competent jurisdiction determine the City may not by contract transfer the City's responsibility to pay for the provision of Fire Hydrants to the District, or legislative action prevents the District from accepting responsibility for the cost to provide and maintain Fire Hydrants, the District's obligation to pay for Fire Hydrants under this Section 9 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 Hydrants is so terminated, both Parties shall have the right within ninety (90) days of any such court determination or legislative action to request amendments to this Franchise 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, unless otherwise agreed.

c. Notwithstanding the District's agreement to accept responsibility for Fire Hydrant costs as provided in this Section 9, the Parties acknowledge and agree the installation, operation, relocation, maintenance and payment for Fire Hydrants by the District is and shall continue to be a governmental function and is not an activity of providing water for hire as defined in Title 80 RCW.

d. Nothing in this Section prevents the City from transferring firefighting services to a fire protection district, regional fire authority or other governmental provider of such services.

9.3. Past Hydrant Costs. The District agrees to waive any claim, demand and right against the City for, and shall release the City from, any obligation to pay or reimburse to the District any fee, cost or expense incurred by the District prior to the Effective Date of this Franchise to operate, maintain, pay for and provide Fire Hydrants and related water system facilities and equipment within the City. For the period of three (3) years following the Effective Date of this Franchise, the City agrees to indemnify and hold the District harmless from and against any claims, demands or lawsuits by or from District ratepayers to or against the District relating to the District's agreement herein to waive any claim, demand and right against the City for any obligation to pay or reimburse to the District any fee, cost or expense incurred by the District prior to the Effective Date of this Franchise to operate, maintain, pay for and provide Fire Hydrants and related water system facilities and equipment within the City.

#### 9.4. Franchise Fee.

a. The District agrees to pay to the City an annual franchise fee equal to six percent (6%) of Net Revenue generated and received from within the City's corporate limits while this Franchise is in effect ("Franchise Fee"). The City reserves the right to unilaterally increase the Franchise Fee up to a maximum of ten percent (10%) of Net Revenue at any time during the term of this Franchise,

provided the City shall give the District at least twelve (12) months advance written notice of any such Franchise Fee increase; provided, however, in the event of any such increase, the release in Section 9.3 above shall be null and void.

b. The Franchise Fee shall be paid by the District to the City for Net Revenues received during each bi-monthly billing cycle during the term hereof and retroactively to March 19, 2019, except for any billing period that District did not charge its customers with the Franchise Fee as a line item pass-through charge. Franchise Fees for each bi-monthly billing cycle shall be due thirty (30) days following the end of the bi-monthly billing cycle.

c. Should the District be prevented by judicial or legislative action from paying any or all of the Franchise Fee, the District shall be excused from paying that portion of the Franchise Fee. Should a court of competent jurisdiction declare, or a change in law that makes the Franchise Fee invalid, in whole or in part, or should a court of competent jurisdiction hold that the Franchise Fee is in violation of a pre-existing contractual obligation of the District, the District's obligation to pay the Franchise Fee to the City under this Section shall be terminated in accordance with and to the degree required to comply with such court action.

d. In the event the District's obligation to pay the Franchise Fee to the City is so terminated, both Parties shall have the right within ninety (90) days of any such court determination or legislative action to request amendments to this Franchise 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.

e. The Parties agree that the Franchise Fee established by this Section has been an issue subject to much negotiation and has led to compromises on the Franchise Fee terms and other terms of this Franchise.

9.5. Utility Tax. In the event the City imposes a utility, business and occupation tax, public utility tax, privilege tax, excise tax or other tax (collectively "utility tax") upon the District or indirectly upon its ratepayers based on the District's Net Revenues, or upon any other basis, the District's Franchise Fee herein to the City shall be reduced by the amount of utility tax as the City may impose and the District shall be obligated to pay only the statutorily defined tax liability in excess thereof. Provided, the Franchise Fee shall not go below zero percent.

9.6. Recovery. The District shall have the right to recover the Franchise Fee or utility tax from the District's customers residing within the City and may identify either as a separate billing item on utility customer's billings.

## Section 10. Codes and Regulations.

The rights, privileges and authority herein granted are subject to and governed by this Franchise and all other applicable ordinances and codes of the City of Lake Forest Park, as they now exist or may hereafter be amended. Nothing in this Franchise 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 the District shall be performed by the District in accordance with applicable federal, state and City rules and regulations, including the King County 2016 Road Design and Construction Standards, or as otherwise amended by the City, and any required permits, licenses or fees, and applicable safety standards then in effect or any Memorandum of Understanding between the Parties.

#### Section 11. Right-of-Way Management.

11.1. Excavation. Whenever the District excavates in any right-of-way for the purpose of installation, construction, operation, maintenance, repair or relocation of its Facilities, it shall apply to the City for a permit to do so in accord with the ordinances and regulations of the City requiring permits to operate in the City right-of-way. In no case shall any such work commence within any City right-of-way without a permit, except as otherwise provided in this Franchise and applicable City ordinance. Work shall only be undertaken or performed in the City arterial right-of-way and state highway between the hours of 9:00 a.m. and 3:00 p.m. unless otherwise approved by the City.

11.2. Restoration after Construction. The District shall, after any installation, construction, relocation, operation, maintenance or repair of Facilities within the Franchise Area, restore the right-of-way to at least the same condition it was in immediately prior to any such work. The District agrees to promptly complete all restoration work and to promptly repair any damage to the right-of-way caused by such work at its sole cost and expense. If it is determined the District has failed to restore the right-of-way in accordance with this Franchise and other applicable City regulations, the notice to repair and deadlines and requirements in Section 3 shall apply.

11.3. Bonding Requirement. The District, as a public agency, shall not be required to comply with the City's standard bonding requirement for working in the City's right-of-way.

11.4. Emergency Work, Permit Waiver. In the event of an emergency where any District Facilities located in the right-of-way are broken or damaged, or if the District's construction area for the District's Facilities is in a condition as to place health or safety of any person or property in imminent danger, the District shall immediately take any necessary emergency measures to repair, replace or remove its Facilities without first applying for and obtaining a permit as required by this Franchise, provided the District shall notify the City as soon as reasonably

possible relative to such emergency activity and shall immediately obtain a permit for such activity if required by this Franchise or City ordinance.

11.5. Permit Requirements and Exemptions.

a. "Exempt Activities" shall be normal maintenance activities that minimally disrupt the City road or traffic patterns in the City right-of-way. Exempt Activities do not require a right-of-way permit. Typical examples include the inspection, operation and maintenance of infrastructure components related to pipeline video inspections, flushing and cleaning of water mains and services, maintenance and inspection of control valves, meter vaults and pump stations, inspection and operation of air-vacs, valves, hydrants and blow-offs, raising or replacing meter vaults and pump stations, raising or replacement of meters, meter boxes, manholes, valve boxes, cleanouts, and mobile work zones. The City reserves the right to require the District to obtain a Right-of-Way Permit for an Exempt Activity if the City determines that it causes substantial disruption to the normal road and traffic patterns.

b. The District shall not be required to obtain a City Right-of-Way Permit to undertake utility work when the City and the District are jointly undertaking a project in the Franchise Area and the District work is located within the City "work zone" for which the City has already approved a traffic control, pedestrian safety or other applicable plans.

11.6. Safety.

a. The District, in accordance with applicable federal, state, and local health and safety rules and regulations shall, at all times, employ ordinary care in the installation, maintenance, operation, and repair of Facilities utilizing methods and devices commonly accepted for public water utility operations to prevent failures and accidents that are likely to cause property damage and personal injury, and shall accomplish work in a manner that will minimize interference with traffic and adjacent right-of-way.

b. All of the District's Facilities in the right-of-way shall be constructed and maintained in a safe and operational condition.

11.7. Dangerous Conditions, Authority for the City to Abate. Subject to the terms and conditions of Section 3 herein, whenever Facilities or the operations of the District cause or contribute to a condition that appears to endanger any person or substantially impair the use or lateral support of the adjoining right-of-way, public or private property, the Director of Public Works may immediately inform the District of the condition. The District will immediately evaluate the condition and if the District determines that a condition exists that causes endangerment to the public or impairment of the right-of-way the District will immediately mitigate the condition at no cost to the City. The resolution of the dangerous condition requires

approval of the District Manager and the Director of Public Works before the work begins.

11.8. No Materials Storage in Right-of-Way. The District and its contractors, subcontractors and agents shall not store materials related to District activities in right-of-way without prior written City approval, which approval shall not be unreasonably withheld. In addition, the District and its contractors and subcontractors shall not park or store materials on private property without the prior consent of the private property owner.

## Section 12. Planning Coordination.

12.1. Growth Management. The parties agree, as follows, to participate in the development of, and reasonable updates to, the each other's planning documents:

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

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

c. 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 Director of Public Works 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 within sixty (60) days.

d. The District shall update information provided to the City under this Section whenever there are major changes in the District's system plans for the Franchise Area.

e. The City shall 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 its Comprehensive Water System Plan, provided that such information is in the City's possession, or can be reasonably developed from the information in the City's possession.

12.2. System Development Information. The District and the City will 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 occur once per year.

12.3. Emergency Management. The City and the District agree to cooperate in emergency management planning, emergency operations response procedures, and recovery activity strategies, including identifying potential hazards and risks in the Facilities so that they can be either mitigated or minimized.

12.4. Maps and Records. Without charge to either Party, the City and the District agree to provide each other with as-built plans, maps, and records that show the vertical and horizontal location of its facilities within the right-of-way, measured from the center line of the right-of-way, using a minimum scale of one-inch equals one hundred feet (1"=100'). Maps shall be provided in Geographical Information System (GIS) or other digital electronic format used by the City or the District, and upon request, in hard copy plan form used by the City or the District.

### Section 13. 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 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 the provisions of the Lake Forest Park Municipal and applicable development pre-approved plans and conditions.

### Section 14. Record of Installations and Service.

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

14.2. At the time of the District's acceptance of this Franchise as provided in Section 22 herein, the District shall provide the City with the most recent update available of any plan(s) of potential improvements to its Facilities within the Franchise Area, and shall provide the City with any updates of such plan(s) when and as prepared by the District; provided, however, any such plan so submitted shall be for informational purposes within the Franchise Area, and shall not be construed as a proposal to undertake any specific improvements within the Franchise Area.

14.3. As-built drawings of the approximate location of any Facilities placed by the District in the Franchise Area shall be made available to the City within ten (10) working days of request.

## Section 15. District Records.

Upon thirty (30) days written notice to the District, the City shall have the right to inspect all District public records, including planning, operations, maintenance, construction, repair, and financial books and records relating to Facilities located within or proposed to be located within the Franchise Area, except for District public records which are exempt from public disclosure or privileged and confidential in accordance with applicable state law; provided this paragraph shall not be construed to waive the City's rights under Chapter 42.56 RCW. To verify the accuracy of District payments to the City, this right to review records includes records pertaining to revenue in order to allow the City to audit District revenue derived under the Franchise.

## Section 16. Shared Use of Excavations.

16.1. The 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 Area informed of its intent to undertake such construction work. The 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.

16.2. If at any time, or from time to time, either the 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:

a. Such joint use shall not unreasonably delay the work of the Party causing the excavation to be made; and

b. 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.

16.3. The City reserves the right to require the District to joint trench with other facilities if both parties are anticipating trenching within the same portion of the Franchise Area and provided that the terms of 1 and 2 above are met.

## Section 17. Insurance.

The District shall maintain a valid membership in Enduris or reasonably equivalent municipal risk management pool at all times during the terms of this Franchise. In the event the District plans to terminate its municipal risk management pool membership, it shall give the City at least ninety (90) days of

written notice. Both Parties shall have the right within ninety (90) days of any such notice to request amendments to this Franchise for alternate insurance requirements. 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.

#### Section 18. Assignment.

All of the provisions, conditions, and requirements of this Franchise shall be binding upon the District, and no right, privilege, license or authorization granted to the District hereunder may be assigned, delegated or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold, condition or delay.

#### Section 19. 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 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 Administrator  
                  City of Lake Forest Park  
                  17425 Ballinger Way NE  
                  Lake Forest Park, WA 98155

To District:   District Office Administrator  
                  Lake Forest Park Water District  
                  4029 NE 178<sup>th</sup> Street  
                  Lake Forest Park, WA 98155

Any Party hereto 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 hereto.

## Section 20. Miscellaneous.

20.1. Severability of Provisions. 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.

20.2. Headings Not Binding. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

20.3. District Payment of City Administrative Costs and Expenses. In addition to the Franchise Fee due under Section 9.4 above, the District shall be subject to all permit fees through the authority granted in this franchise ordinance or under the Lake Forest Park Municipal Code. All time-based charges to the District shall be billed in no greater than one-half hour increment with no minimum. If the City becomes aware of an emergency involving the District's Facilities, the City shall first contact the District and if there is no immediate response, the City shall contact the District's "on call" secondary backup provider.

20.4. Abandoned Facilities. The City shall have the right, but not the obligation, to take over ownership and control of Franchisee's Facilities in the Franchise Area, specifically including the water distribution network, without compensation, if such Facilities are declared abandoned by resolution adopted by the District Board of Commissioners. Furthermore, the City is specifically interested in retaining abandoned water lines for use as conduit for communication purposes and the District shall notify the City at least ninety (90) days prior to abandonment declaration of any water line. Should the City desire to take ownership and control of a water line proposed to be declared abandoned by the District, the District shall transfer ownership of the line to the City by bill of sale.

### 20.5. Amendment.

a. 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 5 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 the 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:

i. references this Franchise; and

ii. 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.

b. 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.

20.6. 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 by the Parties or determined herein, the cost of that process shall be shared equally by the Parties.

20.7. Governing Law/Venue. This Franchise shall be governed by the laws of the State of Washington. Any suit to enforce or relating to this Franchise shall only be filed in King County Superior Court, King County, Washington.

20.8. Integration. This Franchise supersedes all previous franchises between the Parties and 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 the approval and acceptance of this Franchise.

20.9. Survival of Provisions. All of the provisions, conditions and requirements of Section 5 Indemnification shall survive the expiration or termination of this Franchise.

#### Section 21. Directions to the 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. The 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 22. District Acceptance of Franchise.

The District shall have no rights under this Franchise nor shall the District be bound by the terms and conditions of this Franchise unless the District shall,

within thirty (30) days after the effective date of the Ordinance, file with the City its written acceptance of this Franchise.


Section 23. Effective Date.

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, provided 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.


PASSED BY A MAJORITY of the Lake Forest Park City Council this 13<sup>th</sup> day of August, 2020.

  
\_\_\_\_\_  
Jeff Johnson  
Mayor

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
Evelyn Jahed  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kim Adams Pratt  
City Attorney

Introduced:	<u>July 23, 2020</u>
Adopted:	<u>August 13, 2020</u>
Posted:	<u>August 18, 2020</u>
Published:	<u>August 18, 2020</u>
Effective:	<u>August 23, 2020</u>

## ACCEPTANCE OF FRANCHISE

The Lake Forest Park Water District accepts the nonexclusive franchise to the Lake Forest Park Water District approved by the City of Lake Forest Park City Council on August 13, 2020, by the adoption of Ordinance No. 1210.

Dated this 25<sup>th</sup> day of August, 2020

**Lake Forest Park Water District**

By 

Print: \_\_\_\_\_

Its: President