

**ORDINANCE NO. 1515**

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON,** granting Lakehaven Utility District, a Washington Municipal Corporation, its successors and assigns, the right, privilege, authority, and nonexclusive Franchise, to construct, maintain, operate, replace, and repair a water system and sewer system, in, across, over, along, under, through, and below the public rights-of-way of the City.

**WHEREAS,** the Lakehaven Utility District ("District") currently owns, operates, and maintains a water and sewer system within Des Moines' public right-of-way located in the franchise area, and

**WHEREAS,** the District is seeking to establish a comprehensive franchise with the City of Des Moines for water and sewer system lines within Des Moines' current and future public right-of-way, and

**WHEREAS,** in order to maintain control over the use of City of Des Moines' rights-of-way by utilities operating within the City of Des Moines, it is appropriate to enter into franchise agreements with such utilities, and

**WHEREAS,** the District is such a utility, and has negotiated this franchise agreement with the City of Des Moines acceptable to both parties, and

**WHEREAS,** the City Council has the authority to grant franchises for the use of its right-of-way and other public properties (RCW 35A.47.040), and

**WHEREAS,** the City of Des Moines has determined that it is in the best interests of the public to grant the District a franchise on the terms and conditions set forth in this franchise agreement; now, therefore,

**THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:**

**Sec. 1. Definitions.** Where used in this franchise agreement ("Franchise"), the following definitions shall apply:

(1) "District" means the Lakehaven Utility District, a special purpose municipal corporation, and its respective successors and assigns. (2) "City" means the City of Des Moines, a Washington municipal corporation, and its successors and assigns.

(3) "Franchise Area" means all of the public roads, streets, avenues, alleys, highways, and other rights-of-way of the City as now laid out, platted, dedicated or improved; and any and all public City roads, streets, avenues, alleys, highways, and other rights-of-way that may hereafter be laid out, platted, dedicated or improved within the District's water and sewer service areas as may be amended in which the City has jurisdiction, as depicted in Exhibit B, attached hereto, which is by this reference incorporated as if fully set forth herein; provided, that the Franchise Area shall not include or convey any right to the District to install facilities on, or to otherwise use, City owned or leased properties; and provided that the

terms of this franchise (i.e., permitting and enforcement) shall not apply to those public roads, streets, avenues, alleys, highways, and other rights-of-way that may hereafter be laid out, platted, dedicated or improved within the area as depicted in Exhibit B until such time that the City has assumed jurisdiction thereof.

(4) "Facilities" means the District's water and sewer system, lines, mains, pump stations, and all other necessary or convenient appurtenances owned, operated and maintained by the District for the purpose of providing water and sewer service.

**Sec. 2. Franchise grant.** Subject to the terms and conditions set forth in this Franchise, the City grants to the District the right to construct, install, replace, maintain, and own its Facilities, including, but not limited to, water pipelines, sewer pipelines, pump stations, and appurtenances within the City's public right-of-way and the District's water and sewer service area. In exercising authority to construct and install its Facilities and to excavate trenches in City roads for the purposes of constructing, installing, operating, maintaining, removing, and replacing its Facilities, and making connections between the same to the dwellings and other buildings of the consumers, the District shall be governed by and conform to the general rules adopted by the City's Public Works Department, and the District, at no expense to the City, shall complete all work and shall replace and restore the City roads to the condition of the City roads existing immediately prior to such disturbance; PROVIDED, HOWEVER, that no such work shall be done prior to the obtaining of a permit therefore issued by the City's Planning, Building and Public Works Director (hereinafter "Director"), which permit shall set forth conditions pertaining to the work to be done and specifications for the restoration of the roads to the same condition as they were immediately prior to such work. If the District does not repair the City roads to the satisfaction of the Director, the City may, at its sole discretion, repair such City roads, or cause them to be repaired, and the District hereby agrees to reimburse the City for the cost of such work, including reasonable overhead costs.

**Sec. 3. Franchise term.** This Franchise shall take full force and effect five calendar days after being approved by the City, and shall be valid for a period of 20 years, expiring in 2031; provided, that this Franchise shall not take effect and the District shall have no rights under this Franchise unless the District files a written acceptance of this Franchise with the City pursuant to Section 4 of this Franchise.

**Sec. 4. Acceptance by District of terms and conditions.**

(1) This Franchise, and any rights granted hereunder, shall not become effective for any purpose unless and until the District files with the City Clerk the Statement of Acceptance, attached hereto as Exhibit "A," and incorporated by reference.

(2) Should the District fail to file the Franchise Acceptance with the City Clerk within forty five (45) days after

the effective date of the Ordinance approving the Franchise, said agreement shall automatically terminate and shall be null and void.

**Sec. 5. Non-Exclusive Franchise.** This Franchise is not exclusive. It does not prohibit the City from granting franchises for other public or private utilities in, over, along, across, and under any City property, including the Franchise Area. This Franchise does not prevent or prohibit the City from constructing, altering, maintaining or using any of the Franchise Area. The City retains full power to make all changes, relocations; repair, maintenance or other work to or in the Franchise Area as the City deems fit.

**Sec. 6. Jurisdiction.** This Franchise is intended to convey limited rights and interest only as to those roads and rights-of-way in which the City has an actual interest within the Franchise Area. It is not a warranty of title or of interest in City road rights-of-way. None of the rights granted to the District shall affect the jurisdiction of the City over City road rights-of-way or the City's power to perform work upon its roadways, rights-of-way or appurtenant drainage facilities including by constructing, altering, renewing, paving, widening, grading, blasting or excavating. The parties shall comply with all applicable rules and regulations pertaining to them in connection with the matters covered herein.

**Sec. 7. Regulation of use and control.** This Franchise does not deprive the City of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the City road rights-of-way covered by this Franchise. The City reserves the right and power at all times to exercise its police powers with respect to the time, manner and location of the placement of the District's Facilities.

**Sec. 8. Eminent domain.** This Franchise and the limited rights and interests granted by this Franchise are subject to the exercise of eminent domain. In the event of an exercise of eminent domain by the City, the value to be attributed to all the rights and interests granted under this Franchise shall not exceed the actual amount the District paid to the City in obtaining this Franchise.

**Sec. 9. Vacation.** If at any time the City vacates any City rights-of-way covered by this Franchise, the City will not be held liable for any damages or loss to the District by reason of such vacation. The City may, after giving thirty (30) days written notice to the District, terminate this Franchise with respect to any City road or rights-of-way vacated. However, should District notify the City that an easement is required for existing or proposed facilities within the proposed vacation area, the City shall withhold approval of such vacation until the District has notified the City that the necessary easement(s) have been secured, or provisions otherwise made to maintain the viability and use of existing Facilities.

**Sec. 10. Enforcement.** The City's failure to enforce any provision of this Franchise does not constitute a waiver of

its right to enforce that provision or any other provision of this Franchise.

**Sec. 11. Indemnity and Hold Harmless.**

(1) The District shall defend, indemnify and hold harmless the City, its appointed and elected officials, and its employees and agents from and against liability for all claims, actions, injuries, demands, liabilities, losses, costs, damages and judgments, including costs of defense thereof, (collectively referred to as "damages") for injury to persons, death or property damage caused by, arising out of, or incidental to the District's exercise of the rights and privileges granted by this Franchise, except for damages caused by or arising out of the City's sole negligence. In the event that any such claim or demand for damages is presented to or filed with the City, or if any suit or action is initiated against the City based on such claims or demands for damages, the City shall promptly notify the District of the claim, demand, suit or action and the District shall have the right, at its election and its sole cost and expense, to settle and compromise such claim, demand, suit or action, or defend the same at the District's sole cost and expense.

(2) If it is determined that RCW 4.24.115 applies to this Franchise, the District agrees to defend, hold harmless and indemnify the City to the maximum extent permitted under that statute, and specifically for the District's negligence concurrent with that of the City to the full extent of the District's negligence.

**Sec. 12. Insurance.**

(1) The District shall keep a policy of insurance in force with a minimum limit of five million dollars (\$5,000,000.00). Verification of insurance coverage is a condition precedent to the effectiveness of this Franchise.

(2) The insurance shall be maintained in full force and effect at the District's sole expense throughout the term of the Franchise, and, should such insurance be terminated, this Franchise shall terminate as of the date of the termination of insurance coverage.

(3) The coverage provided by the District's insurance policies shall be primary to any insurance maintained by the City, except as to losses or damages attributable to the sole negligence of the City. Any insurance maintained by the City that might relate to this Franchise shall be in excess to the District's insurance and shall not contribute with or to it. The City has no obligation to report occurrences to the insurance companies unless a claim is filed with the City's City Council; and the City has no obligations to pay the District's premiums.

(4) The District shall be solely and completely responsible to perform all work related to this Franchise in compliance with all applicable federal, state, county and city statutes, rules, regulations, ordinances, orders and codes as presently constituted or as may be subsequently amended. The

District's attention is directed to the requirements of the Washington Industrial Safety and Health Act, Chapter 49.17 RCW. The District shall be solely and completely responsible for safety and safety conditions on its job sites and for its work within the Franchise Area, including the safety of all persons and property during performance of any works therein. The services of the City or City's consultant personnel in conducting construction review of the District's work relating to the Franchise is not intended to include review of the adequacy of the District's work methods, equipment, scaffolding, or trenching, or safety measures in, on or near such Franchise Area or job site. The District shall provide reasonable and appropriate access for the City and its inspectors to adequately inspect the work and its conformance with applicable statutes, ordinances, rules, regulations, and the Franchise.

**Sec. 13. Installation, repair, removal or relocation.**

(1) The District shall, at no expense to the City, expeditiously repair all existing Facilities that it owns, operates and maintains within the Franchise Area, including any damage caused directly or indirectly by its Facilities and appurtenant Facilities. The District shall also coordinate and manage the repair of service lines connecting its system to users, if the City requires such repair for any reasonable purpose.

(2) The District shall, at no expense to the City, manage the adjustment, removal or relocation of existing Facilities within the Franchise Area, including all appurtenant Facilities and service lines connecting its system to users, if the City determines such adjustment, removal or relocation is reasonably necessary to allow for an improvement or alteration planned by the City. The City shall give the District written notice of such requirement as soon as practicable. The written notice shall include all available information, such as plans and specifications, as is reasonably necessary for the District to plan for such adjustment, removal or relocation. The City shall make reasonable effort to plan around existing facilities to help minimize project costs on water and/or sewer utility relocations.

(3) District's Facilities shall be constructed, installed, maintained and repaired within the Franchise Area so as to provide safety of persons and property, and not interfere with the free passage of traffic, all in accordance with the laws of the State of Washington, and the ordinances, resolutions, rules and regulations of the City.

(4) For projects that are a part of the City's capital improvement program, in addition to any other notice given to the District, the City shall provide a copy of the capital improvement plan and six (6) year transportation improvement plan when requested. Further, the City shall provide a horizontal plan and vertical profile of the roadway and drainage facilities within it, both existing and as proposed by the City, and the proposed construction schedule. The initial design information shall be given at least one hundred and eighty (180) days before construction is scheduled to begin, except in

cases of urgent construction or emergencies. The District shall respond to this notice, and to any later notices of revised designs, within twenty (20) days of the date of the notice, by providing to the City the District's best available information as to the location of all the District's Facilities, including all appurtenant Facilities and service lines connecting its system to users, and all Facilities that it has abandoned, within the area proposed for the project.

(5) The City shall offer the District the opportunity to participate in the preparation of bid documents for the selection of a contractor to perform the public works project as well as all required adjustments, removals or relocations of the District's Facilities. The City shall have sole authority to choose the contractor to perform such work. Such bid documents shall provide for an appropriate cost allocation between the parties. In addition to the District's allocation of contractor costs, the District shall reimburse the City for all costs, to include but not be limited to legal, engineering, inspections, administration and/or soils testing, related to the District's work and reasonably incurred by the City in the administration of such joint construction contracts. Such costs shall include the direct salary cost of the time of City professional and technical personnel, including the City's consultants, spent productively engaged in such work, plus overhead costs at the standard rate charged by the City on other similar projects. The specific terms of the joint participation on any public work shall be as set forth in a written agreement between the parties.

(6) It is understood that emergency situations may arise that could threaten public health and/or continued operation of the District's utility system and the District may be unable to notify the City in the manner prescribed in Section 14 of this Franchise. In such a situation the District shall immediately correct the hazardous situation and continue to use best efforts to contact the City staff at (206) 870-6522. Dialing 911 is advised for emergency situations that may result in imminent threats to life and/or property.

**Sec. 14. Requirement of construction permits.**

(1) The District has the right, privilege and authority to enter the City road rights-of-way for the purpose of constructing, installing, operating, maintaining, replacing or repairing its Facilities and any service lines on the condition that it obtains construction, excavation, and right-of-way use permits issued by the City. Any work performed, whether by District, its contractors, or third parties, shall include necessary paving, patching, grading and any other reasonably necessary repair or restoration to the City rights-of-way. All work shall be done to the City's satisfaction.

(2) All equipment, pipelines and appurtenances which are used in the construction, installation, operation, maintenance or repair of the District's Facilities and which are located within the City road rights-of-way and owned, operated and maintained by the District shall be considered to be part of the District's system and shall be the responsibility of the

District. All permits for the construction, installation, operation, maintenance or repair of the District's system shall be applied for and given in the name of the District, who will be responsible for all work done under the permit. The District remains responsible whether the work is performed by the District, its contractors, or by third parties.

**Sec. 15. Performance of work.**

(1) Any work performed by the District in the Franchise Area shall conform to all City ordinances and requirements including, but not limited to, Des Moines City Code and the City's Design and Construction Standards in force when the work is performed. All traffic control shall conform to the current edition of the Manual of Uniform Traffic Control Devices in force when the work is performed.

(2) If work performed under this Franchise makes it necessary to turn off or diminish water pressure or potential flow to any fire hydrant, the District shall notify the South King Fire and Rescue by telephone and by written notice, that water pressure or fire flow conditions have been affected. Except in the case of an emergency, the notice shall be provided at least 48 hours prior to the water pressure or potential flow being suspended or diminished. If more than one fire hydrant will be affected, the District shall provide a map of the affected area to South King Fire and Rescue. Out-of-service fire hydrants must be identified as not operational by covering with a properly secured burlap or plastic bag. Fire hydrants should be returned to full service as soon as reasonably possible. The District shall notify South King Fire and Rescue when the hydrant(s) is/are returned to full service.

**Sec. 16. Restoration of City rights-of-way.** After performing work on, under or adjacent to City road rights-of-way, the District is responsible for and shall leave all City road rights-of-way in the condition of the City road rights-of-way existing immediately prior to such disturbance. If the District, its contractors, or third parties working under permit should fail to diligently restore City road rights-of-way to the satisfaction of the City, the City may make such repairs or restorations as are necessary to return the City road rights-of-way to a condition reasonably comparable to the condition of the City road rights-of-way existing immediately prior to such disturbance. Upon presentation of an itemized invoice for repairs or restorations, including all applicable costs, both direct and indirect, to include, but not be limited to, the cost of labor, tools, materials and equipment, the District shall pay the invoice within sixty-five (65) days of its receipt and approval.

**Sec. 17. Information on location of facilities.** The District shall provide the City with all information requested by the City regarding the location of the District's current Facilities, including, but not limited to, copies of all record drawings for such Facilities. If the District performs any work to install, repair, reconstruct, or replace Facilities in the Franchise Area after this Franchise's effective date, the District shall provide the City with all information requested

by the City regarding the location of those Facilities, including, but not limited to, copies of record drawings.

**Sec. 18. Coordination of work in Franchise Area.** To facilitate the coordination of work in City rights-of-way, if either the District or the City plans to make excavations in the Franchise Area, the party planning such excavation shall provide written notice to the other of the planned excavation, affording the other party the opportunity to share in the excavation; provided, that (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made, (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties, and (3) either party may deny such request for safety reasons.

**Sec. 19. Blasting requirements.** The District's right to construct, install, operate, maintain and repair Facilities does not preclude the City, its agents or contractors from blasting, grading, or doing other road work contiguous to the District's Facilities. When practical, the City shall give the District forty-eight (48) hours notice of blasting or excavating.

**Sec. 20. Survey markers and monuments.** Before any work is performed under this Franchise, the District shall establish two or more reference marks to all monuments and markers of every nature relating to subdivisions, plats, rights-of-way, and all other surveys. The reference points shall be located so that they will not be disturbed during any of District's operations under this Franchise. The method of referencing monuments or other markers or points shall be approved by the City before placement. The replacement of all markers or monuments disturbed during any construction of the District shall be made as promptly as conditions permit. The cost of monuments or markers lost, destroyed, or disturbed and the expense or replacement with approved markers or monuments shall be borne by the District.

**Sec. 21. Reservation of rights.**

(1) The District agrees that it shall be subject to all authority now or later possessed by the City or any other governing body having competent jurisdiction to fix just, reasonable and compensatory rates for services under this Franchise.

(2) The City reserves the right, upon thirty (30) days written notice to the District, to amend or modify the provisions or conditions of this Franchise to conform to any state, county, federal, or City statute, ordinance, rule or regulation. The City may terminate this Franchise upon thirty (30) days written notice to the District if the District fails or refuses to comply with such amendment or modification.

**Sec. 22. Assignment.** The District shall not have the right to assign this Franchise without the written consent of the City. No assignment shall be effective unless an acceptance by the assignee of all rights, conditions, terms, provisions and responsibilities contained within the Franchise, as well as surety bonds which the City deems necessary to be posted,

are received as allowed by law. The City's approval of the assignment may be made subject to the assignee's acceptance of new or modified terms of the Franchise.

**Sec. 23. Penalty for violation of conditions.** If the District fails to comply with any material term, condition or responsibility under this Franchise, the City may provide the District with written notice of the City's intent to revoke the Franchise if the District's failure is not cured within thirty (30) days of the date of the notice. During the thirty (30) days following the date of the notice, the District shall have the opportunity to remedy the failure to comply. A public hearing shall be scheduled before the Des Moines City Council at least thirty (30) days following the notification on the issue of the revocation. If at the hearing, the City Council finds that grounds exist to revoke the Franchise under this paragraph and that the revocation is in the public interest, the City Council may by resolution revoke the Franchise. The revocation shall be effective ninety (90) days after the public hearing.

**Sec. 24. Expiration and renewal.**

(1) If the District requests a renewal of this Franchise prior to its expiration date, which renewal shall be granted, on terms reasonable to the parties, unless the City can demonstrate, in good faith, that such renewal would be contrary to its operation of the right of way, the City may, at the City's sole discretion, extend the term of this Franchise for up to one year beyond the expiration date to allow for processing of the renewal. If the City elects to extend the term of this Franchise, written notice of the extension shall be provided to the District prior to the Franchise expiration date.

(2) If the District has not requested a renewal of this Franchise prior to its expiration date, the City has the right, upon thirty (30) day's prior notice to the District, to remove or relocate any of the District's Facilities as is reasonably necessary for the public's health, welfare or safety, or for the construction, alteration, or improvement of the Franchise Area, or for the construction or installation of lines or facilities of other franchise holders. The District shall be liable for costs incurred in any removal or relocation of the District's Facilities under this section.

(3) Upon the expiration of this Franchise, the District shall continue to be responsible for the operation and maintenance of the District's existing facilities in the Franchise Area, but shall not have the right to provide additional services. This section and sections 11, 13, 14, 15, 16, 18, and 20 of this Franchise shall continue in force until such time as the District's Facilities are abandoned to the City's satisfaction.

**Sec. 25. Abandonment and/or removal of District facilities.**

(1) Within one hundred and eighty days (180) of the District's permanent cessation of use of its Facilities, or any portion thereof, the District shall, provide the City with record drawings showing the location of the facilities to be

abandoned; and (ii) written documentation showing its plans for compliance with all applicable regulations pertaining to such abandonment if the facilities to be abandoned contain asbestos materials.

(2) The City shall have the discretion, to either allow the District to abandon such facilities in place, or to require that such facilities be removed from the Franchise Area. Facilities that are allowed to be abandoned in place shall be abandoned pursuant to the City Street Standards to the satisfaction of the City Engineer.

(3) Whenever a conflict cannot be resolved except by removal from the right-of-way of previously abandoned District Facilities, then the District shall, at the District's expense, remove such abandoned facilities. In removing such material, the District shall conform to all local, state, and federal regulations applicable to asbestos abatement, when applicable.

(4) Whenever an unidentified abandoned facility of the District results in a conflict on a City project, the City will expeditiously notify the District and provide the District an opportunity to resolve the conflict. If the conflict results in a construction claim or Contractor delay to the City, the District agrees to pay the City for all costs reasonably incurred in connection with such construction claim and or Contractor delay.

(5) The parties expressly agree that this Section shall survive the expiration, revocation or termination of this Franchise.

**Sec. 26. Non-Discrimination clause.** In all hiring or employment made possible or resulting from this Franchise, there shall be no discrimination against any employee or applicant for employment because of sex, sexual orientation, age, race, color, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupation qualification. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Franchise on the grounds of sex, sexual orientation, race, color, national origin, age, except minimum age and retirement provisions, marital status, or the presence of any sensory, mental or physical handicap.

**Sec. 27. Notice.** All notices between the two agencies hereunder may be delivered or mailed. If mailed, they shall be sent to the following respective addresses:

<b>CITY OF DES MOINES</b>	<b>LAKEHAVEN UTILITY DISTRICT</b>
Planning, Building and Public Works Director	General Manager
21630 11th Ave. S., Ste D	31627 1 <sup>st</sup> Ave South
Des Moines, WA 98198	PO Box 4249
	Federal Way, WA 98063-4249
Tel: 206-870-6522	Tel: 253-941-1516
Fax: 206-870-6544	Fax: 253-839-9310

or to such other representative addresses as either party may hereafter from time to time designate in writing. All notices and payments mailed by regular post (including first class) shall be deemed to have been given on the second business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the day next following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

If an emergency situation develops, it is recommended that the City or the District call 911 to solicit an emergency response.

**Sec. 28. Fire Hydrant/Fire Suppression System maintenance responsibility.** The parties agree that during the term of the Franchise, the District shall be responsible to operate and maintain all portions of the water system, including the fire hydrants and those components of the water system that provide fire suppression benefits within the City boundaries. The District shall, during the term of this Franchise, indemnify and hold the City harmless from any costs associated with the maintenance of the water system, including the cost of maintaining the fire hydrants and those portions of the system that provide fire suppression benefits within City boundaries. As consideration for the District solely bearing responsibility for maintenance of the fire hydrants and those portions of the water system that provide fire suppression benefits within City boundaries, the City agrees to forego, during the term of the Franchise: (1) the levying of any utility tax on revenues of the water and sewer systems; (2) the initiation of any proceedings under RCW Chapter 35.13A to assume the water and/or sewer service jurisdiction of Lakehaven and/or (3) the granting of approval for any other city seeking to assume the service jurisdiction of Lakehaven to provide water and/or sewer service within City boundaries.

**Sec. 29. Compliance with laws.** The District shall conform to all applicable federal, state and local laws and regulations including, but not limited to, the State Environmental Policy Act and the City's Environmental Standards and Ordinances.

**Sec. 30. Dispute resolution.**

(1) In the event that a dispute arises with regard to the terms of this Franchise Agreement, either party may request that the dispute be submitted to non-binding mediation or arbitration prior to court action. Such request for non-binding mediation or arbitration shall be made in writing and mailed by first class, U.S. Mail to the other party. The mediator or arbitrator shall be chosen by agreement of the parties. Either party may refuse to submit to the dispute resolution process. Refusal to engage in the dispute resolution process shall not prejudice the refusing party in any way.

(2) If the parties fail to achieve a resolution of the dispute in this manner, either party may then pursue any available judicial remedies. This Franchise shall be governed by and construed in accordance with the laws of the State of

Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case, and such fees shall be included in the judgment.

**Sec. 31. Attorney fees.** If either party shall be required to bring any action to enforce any provision of this Franchise, or shall be required to defend any action brought by the other party with respect to this Franchise, and in the further event that one party shall substantially prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the prevailing party's reasonable costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in trial court and in appellate courts.

**Sec. 32. Franchise administrative costs.** The District agrees to pay the amount of \$5,000 representing the City's cost and expenses associated with the preparation and execution of this Franchise. Payment shall be due within 60 days of the effective date of this Franchise.

**Sec. 33. Severability.** If any term, provision, condition or portion of this Franchise is 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, unless the dominant purpose of the Franchise would be prevented or the public interest would no longer be served, as determined by the City.

**Sec. 34. Effective date.** This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

**Sec. 35 Existing utilities.** This Franchise shall govern existing and future water and sewer system facilities currently owned, operated and maintained by Lakehaven Utility District within the City of Des Moines.

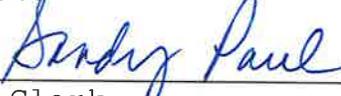
**PASSED BY** the City Council of the City of Des Moines this 14th day of July, 2011 and signed in authentication thereof this 14th day of July, 2011.

  
M A Y O R

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

ATTEST:

  
\_\_\_\_\_  
City Clerk

Published: July 20, 2011

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF KING                )

I, Sandy Paul, CMC, the duly qualified City Clerk of the City of Des Moines, a Non-charter Code City, situated in the County of King, State of Washington, do hereby certify that the foregoing is a full, true and correct copy of Ordinance No. 1515, an ordinance of the City of Des Moines, entitled:

ORDINANCE NO. 1515

AN ORDINANCE approving and granting a non-exclusive franchise for utilities (Water and Sewer) to Lakehaven Utility District.

I further certify that said Ordinance No. 1515 was: (i) introduced on the 14th day of July, 2011; (ii) submitted to the City Attorney on the 14th day of July, 2011; (iii) published on the 20th day of July, 2011, according to law; (iv) approved by a majority of the entire legislative body of the City of Des Moines, at a regular meeting thereof on the 14th day of July, 2011; and (v) approved and signed by the Mayor of the City of Des Moines on the 14th day of July, 2011.

**WITNESS** my hand and official seal of the City of Des Moines, this 18<sup>th</sup> day of July, 2011.

  
\_\_\_\_\_  
Sandy Paul, City Clerk  
City of Des Moines, WA

LEGAL NOTICE  
SUMMARY OF ADOPTED ORDINANCE  
CITY OF DES MOINES

ORDINANCE NO. 1515, Adopted July 14, 2011.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance grants Lakehaven Utility District, a Washington Municipal Corporation, its successors and assigns, the right, privilege, authority, and nonexclusive Franchise, to construct, maintain, operate, replace, and repair a water system and sewer system, in, across, over, along, under, through, and below the public rights-of-way of the City.

The full text of the ordinance will be mailed without cost upon request.

Sandy Paul, CMC  
City Clerk

Published: July 20, 2011

EXHIBIT A

HONORABLE MAYOR AND CITY COUNCIL  
CITY OF DES MOINES, WASHINGTON

In the Matter of the  
Application of Lakehaven  
Utility District, a special  
purpose municipal corporation,  
for a Franchise to Construct,  
Operate, and Maintain  
Facilities In, Upon, Over,  
Under Along, Across and  
Through the Franchise Area of  
the City of Des Moines, WA

FRANCHISE ORDINANCE  
NO. 1515

ACCEPTANCE

**WHEREAS**, the City Council of the City of Des Moines, Washington, has granted a franchise to Lakehaven Utility District, a special purpose municipal corporation, its successors and assigns, by enacting Ordinance No. 1515, bearing the date of July 14, 2011 and

**WHEREAS**, a copy of said Ordinance granting said franchise was received by the Lakehaven Utility District on \_\_\_\_\_, 2011, from said City of Des Moines, King County, Washington; now therefore,

**LAKEHAVEN UTILITY DISTRICT**, a Washington a special purpose municipal corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Des Moines, King County, Washington.

**IN TESTIMONY WHEREOF** said Lakehaven Utility District has caused this written Acceptance to be executed in its name by its undersigned \_\_\_\_\_ thereunto duly authorized on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

ATTEST:  
**LAKEHAVEN UTILITY DISTRICT**

COPY RECEIVED FOR CITY OF DES  
MOINES:

By: \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Des Moines City Clerk

EXHIBIT A

HONORABLE MAYOR AND CITY COUNCIL  
CITY OF DES MOINES, WASHINGTON

In the Matter of the  
Application of Lakehaven  
Utility District, a special  
purpose municipal corporation,  
for a Franchise to Construct,  
Operate, and Maintain  
Facilities In, Upon, Over,  
Under Along, Across and  
Through the Franchise Area of  
the City of Des Moines, WA

FRANCHISE ORDINANCE  
NO. 1515

ACCEPTANCE

**WHEREAS**, the City Council of the City of Des Moines, Washington, has granted a franchise to Lakehaven Utility District, a special purpose municipal corporation, its successors and assigns, by enacting Ordinance No. 1515, bearing the date of July 14, 2011 and

**WHEREAS**, a copy of said Ordinance granting said franchise was received by the Lakehaven Utility District on July 20<sup>th</sup>, 2011, from said City of Des Moines, King County, Washington; now therefore,

**LAKEHAVEN UTILITY DISTRICT**, a Washington a special purpose municipal corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Des Moines, King County, Washington.

**IN TESTIMONY WHEREOF** said Lakehaven Utility District has caused this written Acceptance to be executed in its name by its undersigned John Bowman thereunto duly authorized on this 27<sup>th</sup> day of July, 2011.

ATTEST:  
**LAKEHAVEN UTILITY DISTRICT**

COPY RECEIVED FOR CITY OF DES  
MOINES:

By: [Signature]  
Its General Manager

[Signature]  
Des Moines City Clerk

**LAKEHAVEN UTILITY DISTRICT**  
**King County, Washington**

**Resolution No. 2011-1184**

A **RESOLUTION** of the Board of Commissioners of the Lakehaven Utility District, King County, Washington, approving the Franchise with the City of Des Moines and authorizing the General Manager to execute its acceptance on behalf of the District.

**WHEREAS**, the District maintains water and sewer system infrastructure in right of way within the City of Des Moines, and

**WHEREAS**, the City of Des Moines is authorized by state law to grant to the District a franchise to operate water and sewer facilities in the right of way, and

**WHEREAS**, the District and City have discussed the terms of a franchise under which the District would operate and maintain its water and sewer facilities within such right of ways, and

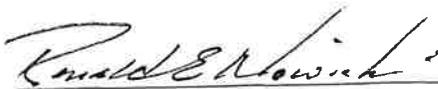
**WHEREAS**, the Board of Commissioners believing that approving the Franchise established by ordinance of the Des Moines City Council is in the District's best interest;

**NOW THEREFORE BE IT RESOLVED** as follows:

1. The Board of Commissioners hereby approves the Franchise granted to the Lakehaven Utility District under City of Des Moines Ordinance No. 1515, adopted by the City Council of the City of Des Moines on July 14, 2011.
2. The Board hereby authorizes and directs the General Manager to execute, on behalf of the Board, the District's acceptance of the Franchise and all terms and conditions set forth therein.
3. This Resolution shall be effective on the date of adoption below.

**ADOPTED** by the Board of Commissioners of Lakehaven Utility District, King County, Washington, at an open public meeting, this 26<sup>th</sup> day of July 2011.

ATTEST:

  
\_\_\_\_\_  
President and Commissioner

Yea

Nay

Abstain