



Developer Extension Agreement

Developer Extension Agreement

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EXAMPLE ONLY

SILVER LAKE WATER AND SEWER DISTRICT

DEVELOPER EXTENSION AGREEMENT

Project Name: _____

District Project No. _____

The Silver Lake Water and Sewer District ("District") and _____ ("Developer") enter into this Developer Extension Agreement for the purpose of constructing an Extension to the District's infrastructure system. The term "Extension" shall apply herein whether Developer is extending the District water system or the District sewer system or both systems. If this Agreement is accepted, the undersigned, in consideration of the mutual promises and covenants herein contained, agrees to the terms and conditions of this Developer Extension Agreement as follows:

1. NATURE AND LOCATION OF EXTENSION AND TYPE OF DEVELOPMENT

- a) Benefited Property. The proposed system Extension shall be installed at the Developer's sole cost for the use and benefit of the property described as:

Snohomish County Tax Parcel No(s). _____

- b) Description and Type of Development. (i.e., single family, multi-family, commercial, etc.).

2. WARRANTY OF AUTHORITY

The Developer and any additional property owners as listed in the Developer Extension Application, see attached Exhibit A, warrant they are the owners and/or Developers of the property described in this Agreement, and agree to be bound by its terms. The Developer shall provide a title report to the District upon request establishing that the parties executing this Agreement are the owners of all the real property described herein.

3. DESCRIPTION OF EXTENSION

- a) Water. The proposed Extension will consist of approximately _____ linear feet of water pipe and appurtenances, and shall be designed and installed in accordance with this Agreement, the Developer Extension conditions listed below, and the District approved Standards. The proposed water system extension shall be installed in streets and other approved rights-of-way and/or easements and shall be for the use and benefit of the property herein described.

Water Special Conditions: _____

- b) Sewer. The proposed Extension will consist of approximately _____ manholes and _____ linear feet of sewer pipe and appurtenances, and shall be designed and installed in accordance with this Agreement, the Developer Extension condition listed below, and the District approved Standards. The proposed sewer system extension shall be installed in streets and other approved rights-of-way and/or easements and shall be for the use and benefit of the property herein described.

Sewer Special Conditions: _____

- c) Sewer Lift Station. If the proposed extension requires the construction of a sanitary sewer lift station and appurtenances, then such extension shall be designed and installed in accordance with a separate Developer Extension Agreement as well as the District's approved Standards.

4. FEES AND EXPENSES TO BE PAID BY THE DEVELOPER

Applicable fees, charges and deposits shall be paid in accordance with District Code Chapter 9.05.

Fees and expenses that are charged by the District, its consultant, legal counsel, or outside agencies may be billed up to six (6) months after final acceptance of the project by the District.

The District will bill the Developer for any unusual costs which shall be paid by the Developer prior to final acceptance of the project. These costs include, but are not limited to, property surveys, changes in design, third party consultant review, excessive construction inspections, project coordination, errors or omissions by the Developer, its contractor or agents, unusual negotiations, legal expenses or any other project related costs. Additional review or inspection costs due to modifications or changes in the original project design or layout shall be considered unusual costs. The District may discontinue review or inspection work on the Developer Extension project until payment is received for any unusual costs incurred.

5. REIMBURSEMENT FEES

Developer knows and understands connection of Developer's extension to District water and sewer systems may be subject to payment for reimbursement of fair pro rata share of costs of construction of system area facilities constructed by others that benefit Developer's project. Pursuant to RCW 57.22 and District Code Section 6.15.030, such reimbursement payments will be determined by the District Board of Commissioners. On receipt of said payments, the District will make payments to others who have constructed said system area facilities.

6. PREPARATION OF CONSTRUCTION PLANS BY DEVELOPER'S ENGINEER

Design engineering shall be performed by the Developer's Engineer. The Developer's Engineer shall be experienced in the design of water and/or sewer infrastructure, and sewer lift stations as appropriate. The Developer shall notify the District in writing if the person or firm proposed to design the project changes after the Developer submits this Agreement to the District.

Before commencing preparation of the project construction plans, the District, the Developer and the Developer's Engineer may hold a pre-design meeting. The Developer will request the meeting with the District and arrange the attendance of concerned parties. At the pre-design meeting, the District will review project submittal requirements, specific design considerations, District standards, plan preparation requirements and other relevant items.

Preliminary engineering plans shall be submitted with the Developer Extension application for a conceptual project review by the District. Review comments, project conditions and the Developer Extension Agreement will be generated by the District and returned to the Developer.

After the Developer Extension Agreement is fully executed, the Developer's Engineer shall submit construction plans to the District for review. All plans shall be prepared in accordance with the District's current DE Plan Preparation Requirements.

The District will review the construction plans and comment thereon. The Developer's Engineer shall incorporate the District's comments into the project design and provide the District with a revised plan set for verification.

The District's approval of the construction plans for the Developer Extension shall be noted on an original plan set. Approval shall be by signature of the District Engineer in an approved signature block. Original approved plans shall become the property of the District.

Failure of the District to discover errors, omissions or discrepancies in the construction plans and the District's Standards and requirements of the Agreement shall not relieve the Developer of their obligation to meet the District's Standards and other requirements of the Agreement.

The District reserves the right to require changes in the plans during the course of work to conform to the District's Standards.

7. JURISDICTIONAL PERMITTING

The Developer is responsible to obtain all required outside jurisdiction permits and approvals unless otherwise noted below. This includes all local agencies and utility districts that have an existing Interlocal and/or Franchise Agreement with the District, and all City Right-of-Way and Utility permits. A copy of these permits shall be provided by the Developer prior to scheduling a pre-construction meeting

Should changes to the Developer Extension plans be required to obtain permits, approvals, and certifications, the Developer's Engineer shall make all required changes and provide copies of the changed documents to the District. The Developer shall be responsible for providing all required agency certifications, acceptance and/or approvals at the completion of the project.

If the proposed development work occurs within the Right-of-Way of unincorporated Snohomish County or the Washington State Department of Transportation (WSDOT), a Utility permit is required from the County or WSDOT for the Developer Extension. The District shall apply for the required Utility permit and provide a copy to the Developer upon approval. The permit must be obtained prior to scheduling a pre-construction meeting unless otherwise approved by the District.

If additional or extraordinary bonding is required by Snohomish County or WSDOT for the proposed work, the Developer is responsible to furnish the required security in a form acceptable to the District.

8. EASEMENTS

All easements shall be obtained by the Developer and submitted on District standard forms without cost to the District. All easements shall be reviewed and approved by the District prior to obtaining signatures and approvals. The Developer shall provide the District with supporting data to verify the location of all easements.

All easements shall be a minimum of fifteen feet in width, unless otherwise approved by the District. An exhibit map shall be included with the easement of the written easement description. Developer shall upon request provide the District satisfactory title insurance insuring without exception the District's interest in all easements conveyed to the District. Developer shall pay all recording fees associated with the easements.

Executed and recorded copies of off-site easements shall be delivered to the District prior to approval of the construction plans. Other easements shall be recorded and delivered to the District prior to final acceptance of the Extension.

Permanent easements shall be conveyed to the District free of any permanent structures or other structures which interfere with District maintenance and repair responsibilities. Developer agrees not to construct or install such structures on the easement after District has approved the construction plans.

9. CONTRACTOR QUALIFICATIONS

a) District Held Permits, Contractor Qualifications, & Developer Responsibility

When the District is required by an agency (e.g., WSDOT or Snohomish County) to be the permit holder for a Developer's work in the right of way, the Developer's contractor must meet minimum qualifications. The approval or rejection of the contractor's qualifications does not limit the developer's responsibility outlined in this agreement.

The Developer shall provide the qualifications for the Contractor's company and onsite foreman(s) demonstrating the Contractor's successful completion of work similar in scope and complexity. A waiver may be granted, see "Waiver" this Section.

b) **Similar in Scope and Complexity Characteristics**

For purposes of this Section, the elements of "Similar in Scope and Complexity" is a project having the following elements:

- Traffic control, scheduling, planning, operations, water and/or sewer utility construction, and roadway restoration.
- Successful record of performing work with the resources and an experienced work force.
- Ability to meet all permit requirements, easement requirements, and government agencies requirements and regulations.

This record may be satisfied by providing examples of five (5) projects of the same depth/size which were completed within last five (5) years by the contractor that will be performing that portion of the work under the District's right of way permit.

c) **References**

The District reserves the right to contact references and investigate past performance and qualifications of the Contractor, as well as to contact references for projects not identified by the Contractor.

References may be asked to rate the performance of and describe their experience with the Contractor and their team members. Information may be solicited and evaluated on the same criteria outlined above, as well as other information deemed pertinent by the District. Unsatisfactory reference(s) may be justification to determine a Contractor is not responsible to work in the right of way under the District held permit.

d) **Waiver**

If the District has direct experience with the Contractor or their lead team members, and they have successfully performed work similar in scope and complexity under a right of way permit in the last 2 years, the references and background project references may be waived.

10. PRE-CONSTRUCTION MEETING

No work shall begin on the Extension without authorization from the District. The Developer may contact the District to schedule a pre-construction meeting after the following items are completed:

- a) Construction plans have been approved by the District
- b) Required insurance certificates have been provided that cover the Developer and each Contractor or sub-contractor who will be working on the water and/or sewer improvements
- c) Any required Utility Right-of-Way permits have been obtained

The preconstruction meeting shall be held at the District's offices, on the project site, or online virtually during normal District office hours. The meeting shall be attended by the Developer, Developer's Contractor with the project superintendent and foreman, any sub-contractor who will be involved in the construction of the water and/or sewer improvements, Developer's Engineer if appropriate, District Inspector and Engineer, other District staff personnel, and government agency representatives if they so request to be present.

The District may elect to excuse the attendance at the meeting of any of the attendees upon request. If the Developer changes Contractors or hires additional Contractors who were not included in the preconstruction meeting for the installation of the water and/or sewer facilities, an additional meeting may be required by the District prior to the new Contractor(s) doing any work on the water and/or sewer installations.

11. INSURANCE

a) Insurance Term

The Developer shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Developer's work through the term of the Contract and for two (2) years after the Final Acceptance date.

b) No Limitation

The Developer's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Developer to the coverage provided by such insurance, or otherwise limit the District's recourse to any remedy available at law or in equity.

c) Minimum Scope of Insurance

The Developer's required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an endorsement providing at least as broad coverage. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The District shall be named as an additional insured under the Developer's Commercial General Liability insurance policy with respect to the work performed for the District using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession if required by the District.
5. Contractors Pollution Liability insurance covering losses caused by pollution conditions that arise from the operations of the Developer if required by the District.

If the Contractors Pollution Liability insurance is written on a claims-made basis, the Developer warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under the Contract is completed.

The District shall be named by endorsement as an additional insured on the Contractors Pollution Liability insurance policy.

If the scope of services as defined in this Contract includes the disposal or handling of any hazardous materials from the job site, including raw sewage, the Developer must furnish to the District evidence of Pollution Liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this Contract. Coverage certified to the

District under this paragraph must be maintained in minimum amounts of \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000.

d) Minimum Amounts of Insurance

The Developer shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$2,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.
3. Professional Liability insurance shall be written with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.
4. Contractors Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

e) Governmental Entity Developers

If the Developer is a governmental entity (i.e. school district, county, city), the Developer's self-insured status or membership in a self-insured liability risk pool may satisfy the insurance requirements in this Section.

f) District Full Availability of Developer Limits

If the Developer maintains higher insurance limits than the minimums shown above, the District shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Developer, irrespective of whether such limits maintained by the Developer are greater than those required by this Contract or whether any certificate of insurance furnished to the District evidences limits of liability lower than those maintained by the Developer.

g) Other Insurance Provision

The Developer's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the District. Any insurance, self-insurance, or self-insured pool coverage maintained by the District shall be excess of the Developer's insurance and shall not contribute with it.

h) Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

i) Verification of Coverage

The Developer shall furnish the District with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the Contract before commencement of the work and for two (2) additional years after Final Acceptance. Upon request by the District, the Developer shall furnish certified copies of all required insurance policies, including endorsements, required in this Contract and evidence of all Contractors' and Subcontractors' coverage.

j) Contractors'/Subcontractors' Insurance

The Developer shall cause each and every Contractor and Subcontractor to provide insurance coverage that complies with all applicable requirements of the Developer-provided insurance as set forth herein, except the Developer shall have sole responsibility for determining the limits of coverage required to be obtained by Contractors and Subcontractors. The Developer shall ensure that the District is an additional insured on each and every Contractor's and Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

k) Notice of Cancellation

The Developer shall provide the District and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.

l) Failure to Maintain Insurance

Failure on the part of the Developer to maintain the insurance as required shall constitute a material breach of contract, upon which the District may, after giving five business days notice to the Developer to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the District on demand, or at the sole discretion of the District, offset against funds due the Developer from the District.

- m) The insurance policy shall not contain a deductible or self-insured retention in excess of \$10,000 unless approved by the District.
- n) Providing coverage in the stated amounts shall not be construed to relieve the Developer from liability in excess of such limits.
- o) In the event the owner of the right of way, including but not limited to Snohomish County or WSDOT, requires to be added as an additional insured then it is the Developer's responsibility to comply with any such additional insured requirements.

12. INDEMNITY

The Developer shall defend, indemnify and hold the District, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the District.

However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Developer and the District, its officers, officials, employees, and volunteers, the Developer's liability hereunder shall be only to the extent of the Developer's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Developer's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

13. WARRANTIES OF DEVELOPER - WATER AND SEWER

Prior to final acceptance, the Bill of Sale shall be provided by the Developer and transfers ownership of the Extension from the Developer to the District. The District shall review the As-Built plans to verify the final infrastructure quantities and review the submitted construction costs. The Developer's construction cost shall be used for the Bills of Sale unless otherwise approved by the District. The Bill of Sale form will be provided by the District and shall contain the following warranties with the District as beneficiary:

- a) That the Developer owns the Extension free and clear of all encumbrances and Developer has full authority to transfer title thereto to the District and will defend the title of the District against the claims of all third parties claiming to own the same or claiming any interest therein or encumbrance thereon; and
- b) That all bills and taxes relating to the construction and installation of the (water or sewer) Extension and appurtenances have been paid in full and there are no lawsuits pending involving this project. If any lawsuit is filed as a result of, or involving, this project and its warranties, then the Developer shall undertake to defend the lawsuit and shall accept responsibility for all costs of litigation, including costs on appeal, and shall hold the District harmless on any judgment rendered against the District.
- c) That Developer complied with all laws and ordinances respecting construction of this project, and the Extension is in proper working condition, order and repair, and is adequate and fit for the intended purpose of use as a water and/or sewer system and as an integral part of the water distribution and/or sewer collection system of the District, and the Extension has been constructed in accordance with the conditions and standards of the District; and
- d) That for a minimum period of two (2) years after the date of final acceptance of the Extension by the District, the Extension and all parts thereof shall remain in proper working condition, order and repair; and Developer shall repair or replace, at its expense, any work or material which, proves defective during the period of the warranty.

In addition, Developer shall obtain and assign to the District warranties and guaranties from its subcontractor or suppliers where such warranties or guaranties are specifically required in this Agreement. When corrections of defects occurring within the warranty period are made, Developer may be required to warranty the corrected work for two (2) years after acceptance of the corrected work by the District at the sole discretion of the District.

14. CORRECTION OF DEFECTS OCCURRING WITHIN WARRANTY PERIOD

The developer shall be responsible for correcting all defects in workmanship and material appearing within two years after completion and acceptance of the project. When defects in the Extension are discovered within the warranty period, Developer shall start work to remedy any such defects within seven (7) calendar days of notice by District and shall complete such work within a reasonable time. In emergencies, where damages may result from delay or where loss of service may result, corrections may be made by District upon discovery, in which case the cost thereof shall be borne by Developer. In the event Developer does not commence and/or accomplish corrections within the time specified, the work may be accomplished by District at its option, and the cost thereof shall be paid by Developer.

Developer shall be responsible for any expenses incurred by District resulting from defects in Developer's work, including actual damages, costs of materials and labor expended by District in making repairs and the cost of engineering, inspection and supervision by District or the District Consultants.

15. PERFORMANCE GUARANTEE

The District at its sole discretion may require the Developer to furnish prior to the pre-construction meeting a performance bond or acceptable monetary guarantee in a form as determined by District in an amount not less than 25% of the cost of the Extension as determined by the contractor bid price. The performance guarantee shall require completion of all work in accordance with the Agreement, the Plans and Specifications, and all other requirements and obligations of District within the period of acceptance in accordance with Section 19.

The District at its sole discretion may also require a performance bond or acceptable monetary guarantee in a form as determined by District for the final completion of the extension, including but not limited to, utility adjustments, paving and/or restoration work in an amount to be determined by the District.

The District at its sole discretion may also require a payment bond or acceptable monetary guarantee in a form as determined by District requiring the payment by Developer of all persons furnishing labor and materials in connection with the work performed under the Agreement, and to hold District harmless from any claims there from. Any payment bond required by District shall be provided to District prior to the pre-construction meeting as a condition of District granting final acceptance of the work referenced herein. No third person or party shall have any rights under any performance guarantee District may require from Developer and such performance guarantee is provided entirely for the benefit of District and Developer and their successors in interest.

Pursuant to District Code, any developer that is a state agency or unit of local government may be deemed exempt at the District's sole discretion from any DEA provision that requires a developer to secure its performance with a surety bond or other financial security device including cash or an assigned account.

16. MAINTENANCE BOND

Acceptance by District shall not relieve Developer of the obligation to correct defects in labor and/or materials as herein provided and/or the obligations set forth in applicable paragraphs hereof. Prior to acceptance of the Extension by District and the transfer of title to such extension(s) as set forth herein, Developer shall furnish to District a maintenance guarantee (cash or bond) which shall continue in force from the date of final acceptance of said Extension for a period of two (2) years. The bond shall be in a form as prescribed by District and shall require Developer and the bonding company to correct the defects in labor and materials which arise in said system for a period of two (2) years from the date of final acceptance of the system and transfer of title.

The maintenance bond shall be in an amount equal to fifteen (15) percent of the cost of said Extension, but not less than five thousand dollars (\$5,000.00). The District shall review the submitted construction costs for the Bills of Sale and determine the amount of the maintenance bond.

Special Provision Applying to Developers that are a State Agency or Unit of Local Government ("municipality"). Pursuant to District Code, a Developer that is a municipality has the option of: (a) furnishing a maintenance bond to the District as set forth in this Agreement, above; or (b) in lieu of providing a maintenance bond to the District, agreeing to promptly correct any defects in labor and/or materials associated with the installation of the new water and/or sewer system for a period of two years after acceptance. The District shall be responsible for re-inspection of the project prior to the two-year date. If no defects are detected in the re-inspection, no further work will be required of the municipality. The District maintains sole discretion in the identification of defects in labor and/or materials during the two-year period.

17. EARLY USE OF THE EXTENSION BEFORE FINAL PAVING

If the Developer completes the Extension and desires service prior to the final paving within the development, then at the District's option and as a condition of service, a Completion Guarantee in the form of a performance bond or an assignment of funds in an amount acceptable to the District shall be deposited with the District to cover the cost of work yet to be completed. After the Developer notifies the District that top lift paving has been completed, the Completion Guarantee will be released after the District's satisfactory inspection.

18. LIENS

Prior to final acceptance of the Extension, the Developer shall deliver to the District a Bill of Sale(s) indicating that there are no liens against the Work. If any lien arises or remains unsatisfied after acceptance of the Work, then the Developer shall reimburse the District for any costs incurred on account thereof, including reasonable attorneys' fees.

19. PHASING AND PERIOD OF ACCEPTANCE

Partial completion or phasing of the development work is not permitted by the District. Water and Sewer Service Connection Applications shall be submitted in accordance with District Code Chapter 6.20.

Unless otherwise approved by the District, the Developer Extension shall be completed so that it can be accepted in its entirety within two (2) years of the date of this Agreement, otherwise this Agreement and all the Developer's rights herein shall terminate.

If construction has begun within the initial two year timeframe, the terms and conditions of the Developer Extension Agreement may be extended by a period of one (1) year if approved by the District. Additional time extensions may be considered by the District upon request by the Developer.

If the Agreement terminates or is cancelled, the Developer shall submit an application for a new Developer Extension Agreement to the District. Any new Agreement shall be subject to any new or amended Code requirements, policies, or standards and specifications.

The District shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding that the time may not have expired for completing the entire work or such portions, which will not interfere with the developer performing the remaining work. Such taking possession and use shall not be deemed acceptance of any work. The District is not obligated to supply service to the Extension until all work is completed and accepted by the District.

20. FINAL ACCEPTANCE - CONDITIONS PRECEDENT

Compliance with all terms and conditions of this Agreement, the Plans, General Conditions, and Specifications prepared hereunder and other District requirements shall be a condition precedent to District's obligation to allow connection to the District's system, to accept the Bill of Sale to the Extension, and to District's agreement to maintain and operate the Extension and to provide service to the real property that is described in this Agreement.

District will not be required to allow any connection to District's system any portion of the real property described in this Agreement if there are any fees or costs unpaid to District under this Agreement or there are other fees arising under other District requirements which are unpaid.

District will not be obligated to provide service to the property described in this Agreement if construction by third parties of facilities to be deeded to District has not been completed and title accepted by District if such third-party facilities are necessary to provide service to the property described in this Agreement.

District will not be obligated to allow service connections to its system until all development fees and connection charges have been paid that are in effect on the date of the service permit application. Developer understands and specifically agrees that any connection fee and charges required by District to connect to District's system will be determined by District at the time of connection. Developer understands and agrees that any and all fees and charges of the District may be adjusted by District prior to the time of connection to District system, and Developer waives actual notice of any hearing by Board of Commissioners to consider adjustment of any such fees and charges.

District will accept title to the extension at such time as all work which may, in any way, affect the lines constituting the Extension has been completed, and any damage to said Extension which may exist has been repaired, and District has made final inspection and given its approval to the Extension as having been completed in accordance with this Agreement, the approved Plans, adopted Standards and other requirements of District.

21. PROCEDURE FOR ACCEPTANCE

Acceptance of title to the Extension will be made by motion of the Board of Commissioners. Prior to such acceptance, the following items required by this Agreement shall be executed by Developer and any additional owners and delivered to District. There will be no conditional acceptance for use and operation.

- a) All terms and conditions of this Agreement, the Drawings and Specifications and other District requirements have been complied with.
- b) All construction activities have been completed, inspected, and approved by District.

- c) All Restoration Release forms have been signed by the property owners affected by the Project and submitted to District if required.
- d) The As-Built plans have been completed in accordance with current District requirements.
- e) All easement issues have been resolved and recorded easement documents have been submitted to and accepted by District.
- f) The Bill of Sale for water and sewer systems required for transfer of ownership of the Extension(s) have been submitted to the District.
- g) The required Maintenance and Performance Bonds have been provided to District.
- h) All warranties and guarantees specifically required in this Agreement have been obtained with District identified as the Owner/beneficiary, and submitted.
- i) All outstanding District fees and charges have been paid for the Developer Extension.
- j) All jurisdictional Utility Right-of-Way permits and associated requirements have been completed and released.
- k) Unless otherwise approved, all backflow prevention devices shall be installed prior to final inspection in accordance with District Code Chapter 6.20, Article V, and a Backflow Prevention Assembly Test Report for each device must be submitted prior to final acceptance of the project.

22. DATE OF FINAL ACCEPTANCE

The date of final acceptance shall be the date of the written notification of acceptance by the District. The Bills of Sale will be accepted quarterly by motion by the District Board of Commissioners.

23. EFFECT OF ACCEPTANCE

Acceptance by District shall cause the Extension to be a public system subject to the control, use and operation of District and all regulations, conditions of service, and service charges as District determines to be reasonable and proper, and subject to the laws of the State of Washington. The two-year warranty period also commences with the acceptance of the Extension by the District.

24. RATES AND CHARGES

The property described in this Agreement shall be subject to all rates and charges established by the District in place at the time of final acceptance.

The Developer is responsible for all District costs, fee and charges incurred as part of the Extension, including those from the Developer's contractor and subcontractors.

25. CONTRACTING AND SUBCONTRACTING

Developer may contract or subcontract out construction work to install the Extensions subject to the following:

District has a substantial interest in determining that the Extensions are constructed and connected to District's existing system in a good, workmanlike manner. Therefore, Developer agrees to submit the names of all contractors, subcontractors, materialmen and suppliers to District prior to the commencement of construction. District reserves the right to approve or disapprove same in accordance with Section 9 of this agreement, which approval by District shall not be unreasonably withheld. In determining whether contractors, subcontractors, materialmen, and suppliers are acceptable, District may take into consideration prior work performed by same in District, available manpower and equipment, financial ability, and prior experience performing work similar to that to be performed pursuant to this Agreement. If any contractor, subcontractor, materialmen, or supplier is unacceptable, District shall give notice of same to Developer no later than 7 days before the commencement of construction. Developer agrees that construction of the Extensions shall not commence until all contractors, subcontractors, materialmen, and suppliers are accepted by District.

Developer shall be fully responsible for the acts and omissions of Developer, as well as Developer's employees and agents, Developer's contractors or subcontractors and persons employed, directly or indirectly, by Developer's contractors or subcontractors. District reserves the right to require Developer to replace any of Developer's contractors, subcontractors, materialmen, or suppliers upon a finding of continued unsatisfactory materials, workmanship, superintendence, or progress. Developer agrees to require Developer's contractor or subcontractor to make all changes necessary to correct unsatisfactory materials, workmanship, superintendence and progress and to replace Developer's contractors, subcontractors, materialmen, or suppliers upon failure to implement the needed changes.

If Developer fails to replace any of Developer's contractors, subcontractors, materialmen, or suppliers with a satisfactory substitute within 10 days of notice from the District to remove any such contractors, subcontractors, materialmen, or suppliers, then District may terminate this Agreement.

If Developer utilizes a separate contractor or subcontractor to perform any of the work pursuant to this Agreement, the Developer shall ensure that the contractor or the subcontractor complies with all terms and conditions of this Agreement.

District shall have no right of control (actual or implied) over the execution of the work undertaken by any contractors or subcontractors retained by Developer. Developer shall be solely responsible for the acts or omissions of such contractors and subcontractors. Any inspection, review or observance by District concerning the progress or execution of the work is solely for the purpose of monitoring compliance with the terms and conditions of the Agreement.

26. NO ASSIGNMENT WITHOUT DISTRICT APPROVAL

This Agreement and Developer's rights and responsibilities may not be assigned without the prior written consent of the District. Any District approved assignment shall be in writing in a form approved by the District and filed with the District by the Developer.

27. LAWS TO BE OBSERVED

The Developer shall comply with all federal, state, and local laws, ordinances and regulations that affect the Work that is the subject of this Agreement. The Developer shall pay all expenses incurred for complying with such laws, ordinances and regulations.

28. DISTRICT PENALTIES AND FINES

The District may impose fines for violating the terms and conditions of the Developer Extension Agreement in accordance with adopted polices and Code. The Developer agrees to comply with all District requirements to ensure compliance with the terms of the Developer Extension Agreement by the Developer's agents. Developer agrees to pay any fines imposed by the District.

29. NO THIRD PERSON SHALL HAVE ANY RIGHTS HEREUNDER

This agreement is made only for the benefit of the District and the Developer. No third person or party shall have any rights hereunder whether by agency or as a third-party beneficiary or otherwise.

30. GOVERNING LAW/FORUM

This agreement shall be construed and enforced in accordance with the law of the State of Washington. Any suit to enforce the provisions of the agreement shall be brought in the Superior Court of Snohomish County, Washington.

31. REMEDIES AVAILABLE TO DISTRICT

If the Developer fails to pay any fees, charges or fines when due as determined by the District, then the charge or fine shall be delinquent and shall accrue interest at lesser of 12% or the highest legal rate per annum until paid as permitted by law. In addition to other remedies, the District may file a lien against the Real Property referenced herein and commence foreclosure proceedings as permitted by law.

32. COSTS OF LITIGATION

If either the District or the Developer commences any legal action relating to the provisions of this agreement, then the prevailing party shall be entitled, to recover all costs of litigation, including out of pocket expenses, expert fees, and reasonable attorneys' fees, including all such costs and fees incurred on appeal.

In any litigation arising out of this Agreement or related to this project to which the District is not a party the Developer shall reimburse the District for all of its costs and expenses, including attorney's or engineer's fees, that are reasonably and necessarily incurred as a result of such litigation.

33. NOTICE

Unless otherwise notified, any notice or other correspondence required by this Agreement shall be in writing to the address identified in the application for Developer's Extension Agreement.

34. DISTRICT STANDARDS

The Silver Lake Water and Sewer District Standards, as currently adopted in the District Code Chapter 6.20 or hereafter amended, are incorporated herein by this reference.

35. REIMBURSEMENT AGREEMENT

Pursuant to RCW 57.22, the District may agree to a Reimbursement Agreement with the Developer for offsite sewer or water improvements. A Developer seeking reimbursement for costs of constructing sewer or water system offsite of the proposed development by adjacent properties directly benefiting from connecting to the new system shall enter into a Reimbursement Agreement with the District.

After final acceptance of the Developer Extension work, the Developer may make a request for such agreement in accordance with the requirements set forth in the District Code Section 6.15.030.

Developer agrees that Developer's costs for the sewer/water improvements to be constructed by Developer hereunder have been factored into the feasibility of Developer's Project and that Developer's decision to proceed with Developer's Project is not contingent or in any way dependent on receipt of reimbursement payments or payments from other property owners or developers that may connect to sewer/water facilities constructed by Developer under this agreement. Further, Developer agrees that the District shall not collect payments on behalf of Developer from other property owners or developers that receive no benefit at the time of connection to the District system from water/sewer facilities constructed hereunder. Developer agrees and acknowledges that District reserves the right to direct water/sewer flows and to contract for the construction of other sewer/water facilities, regardless of whether future flows and future facilities constructed under other contracts affect anticipated receipt of latecomer payments hereunder.

36. COMPLETE AGREEMENT

This Agreement constitutes the entire agreement between Developer and District, which may only be changed in writing. For purposes of identification, this Agreement shall be assigned a number by the District, which number shall be endorsed on the first page of the Agreement.

37. INSTRUCTIONS TO EXECUTE THE AGREEMENT

- a. If the Developer is a corporation, this Agreement shall be executed by its duly authorized representative and the Developer hereby warrants same.
- b. If the Developer is a partnership, at least one of the general partners shall sign this Agreement and indicate his/her capacity as such.
- c. If the Developer is a joint venture, this Agreement shall be executed by the authorized representative, pursuant to a power of attorney, who shall sign on behalf of the others.

Signature page follows:

SILVER LAKE WATER AND SEWER DISTRICT:

By: _____ Dated: _____

Its: President, Board of Commissioners

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute said instrument and acknowledged it as the President of the Board of Commissioners of SILVER LAKE WATER AND SEWER DISTRICT, a municipal corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

PLACE NOTARY STAMP HERE

Dated this _____ day of _____, 20____

Signature _____

Printed Name
Notary Public in and for the State of Washington
residing _____ at

My Appointment Expires _____

DEVELOPER: _____

By: _____ (Signature)

_____ (Print Name)

Its: _____ (Title or Position)

Signature authorization shall be provided for individuals signing for corporations, partnerships, joint ventures, etc.

Dated this _____ day of _____, 20____.

DEVELOPER – INDIVIDUAL

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

PLACE NOTARY STAMP HERE

Dated this _____ day of _____, 20__

Signature

Printed Name
Notary Public in and for the State of Washington
residing _____ at

My Appointment Expires _____

DEVELOPER – CORPORATE / PARTNERSHIP

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

PLACE NOTARY STAMP HERE

Dated this _____ day of _____, 20__

Signature

Printed Name
Notary Public in and for the State of Washington
residing _____ at

My Appointment Expires _____