Council Meeting: 05/17/2011
Agenda: Other Business
Item #: 8. h. (2).

CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Rob Jammerman, Development and Environmental Services Manager
William Evans, Assistant City Attorney
Ray Steiger, P.E., Interim Public Works Director

Date: May 5, 2011

Subject: WOODINVILLE WATER DISTRICT FRANCHISE AGREEMENT

RECOMMENDATION:

Staff recommends that the City Council approves the attached Ordinance for the Woodinville Water District Franchise Agreement.

BACKGROUND DISCUSSION:

On May 3, 2011, the City Council conducted the first reading and held a public hearing for the Woodinville Water District Franchise Agreement. There were no comments received at the public hearing. Council directed staff to bring the Ordinance back for final approval at the May 17, 2011 Council meeting.

Attachments: Ordinance (including Exhibit 1)
Publication Summary

ORDINANCE NO. 4299

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO GRANTING WOODINVILLE WATER DISTRICT, A WASHINGTON MUNICIPAL CORPORATION, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT AND MAINTAIN, REPAIR, REPLACE, OPERATE UPON, OVER, UNDER, ALONG AND ACROSS THE FRANCHISE AREA WATER AND SEWER FACILITIES FOR PURPOSES OF ITS WATER AND SEWER UTILITY BUSINESS.

WHEREAS, Woodinville Water District (“WWD” or "District") owns water and sewer facilities (“Facilities”) in the City of Kirkland ("City"), and a portion of such Facilities are located within the City right-of-way as hereinafter defined; and

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

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

WHEREAS, the City and WWD have drafted a Franchise Agreement to allow WWD to operate its facilities within the City right-of-way;

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

Section 1. Definitions. Where used in this franchise (the "Franchise") these terms have the following meanings:

(a) "WWD" means the Woodinville Water District, a Washington municipal corporation, and its respective successors and assigns.

(b) "City" means the City of Kirkland, a municipal corporation of the State of Washington, and its respective successors and assigns.

(c) "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 WWD’s

service area within the present corporate boundaries of the City.

(d) "Facilities" means tanks, meters, pipes, mains, services, valves, blow-offs, vaults, fire hydrants, risers, manholes, pressure reducing valves ("PRVs"), pump stations, meter stations, lift stations, lines, and all other necessary or convenient facilities and appurtenances thereto, whether the same be located over or under ground.

(e) “Relocation” means relocation, replacement, or extension of WWD facilities within the Franchise Area as provided for in Section 4 herein unless otherwise noted.

(f) "Ordinance" means this Ordinance No. 4299, which sets forth the terms and conditions of this Franchise.

Section 2. Franchise.

A. Facilities within Franchise Area. The City does hereby grant to WWD the right, privilege, authority and franchise to:

(a) 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 and sewer utility functions as defined in Title 57 RCW.

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

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

Section 3. Non-interference of Facilities.

A. WWD's Facilities shall be located, relocated and maintained within the Franchise Area so as not to unreasonably interfere with the free and safe passage of pedestrian and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington. Nothing herein shall preclude WWD from effecting temporary road closures as reasonably necessary during construction or maintenance of its Facilities provided WWD receives prior City approval, which shall not

be unreasonably withheld. Whenever it is necessary for WWD, in the exercise of its rights under this Franchise, to make any excavation in the Franchise Area, WWD shall, upon completion of such excavation, restore the surface of the Franchise Area to the specifications established within the City of Kirkland Public Works Policies and pre-approved plans and in accordance with standards of general applicability imposed by the City by ordinance or administrative order; provided, however, if the surface of the affected Franchise Area has an Overall Condition Index (OCI)* rating of 40 or less prior to WWD's excavation, then the area shall be restored with a permanent asphalt patch per City of Kirkland Pre-approved Plans in lieu of an asphalt street overlay.

If WWD should fail to leave any portion of any Franchise Area so excavated in a condition that meets the City's specifications per the Public Works Policies and Standards, then, subject to the foregoing sentence, the City may after notice of not less than five (5) days to WWD, which notice shall not be required in case of an emergency, order any and all work considered necessary to restore to a safe condition that portion of the Franchise Area so excavated, and WWD shall pay to the City the reasonable cost of such work; which shall include among other things the overhead expense of the City in obtaining completion of said work. The parties agree that this provision may be renegotiated upon the request of either party.

*The City of Kirkland's Overall Condition Index (OCI) rating is based upon standard pavement condition rating methodologies as recognized by the Washington State Department of Transportation (WSDOT) and the Northwest Pavement Managers Association (NWPMA).

B. Any surface or subsurface failure occurring during the term of this Agreement and caused by any excavation by WWD shall be repaired to the City's specifications, within fifteen (15) days or upon five (5) days written notice to WWD by the City; if WWD fails to so timely repair, then the City shall order all work necessary to restore the damaged area to a safe and acceptable condition and WWD shall pay the reasonable costs of such work to the City.

Section 4. Relocation of Facilities.

A. Whenever the City causes or does any Work within the Franchise Area that reasonably requires the Relocation of WWD's then existing Facilities within the Franchise Area, the City shall:

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

(b) Provide WWD, at least one hundred eighty (180) days prior to the commencement of such project, written notice that a project is expected to require Relocation; and

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

After receipt of such notice and such plans and specifications, WWD shall Relocate such Facilities within the Franchise Area so as to accommodate such street and utility improvement project; provided, however, WWD may, after receipt of written notice requesting a Relocation of its Facilities, submit to the City written alternatives to such Relocations. The City shall within a reasonable time evaluate such alternatives and advise WWD in writing whether one or more of the alternatives is suitable to accommodate work that would otherwise necessitate Relocation of the Facilities. If so requested by the City, WWD shall submit such additional information as is reasonably necessary to assist the City in making such evaluation. The City shall give each alternative full and fair consideration. In the event the City ultimately reasonably determines that there is no other reasonable or feasible alternative, then WWD shall Relocate its Facilities as otherwise provided in this Section 4. The City shall cooperate with WWD to designate a substitute location for its Facilities within the Franchise Area. WWD must finish Relocation of each such Facility within the 180 days of commencement notice so established in 4.A(b) above excluding any days for the City's review of proposed alternatives covered in this paragraph. The cost of Relocating such Facilities existing within the Franchise Area shall be paid as follows:

(I) if the Relocation occurs within six (6) years after WWD initially constructed such Facility, then the Relocation shall be at the City's sole cost;

(II) if the Relocation occurs more than six (6) years but within ten (10) years after WWD initially constructed such Facility, then the City shall pay fifty percent (50%) of the cost of such Relocation and WWD shall pay the remaining fifty percent (50%); and

(III) if the Relocation occurs more than ten (10) years after WWD initially constructed such Facility, then the Relocation shall be at WWD's sole cost.

(IV) For the purpose of planning, WWD 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.

(V) Provided however that asphalt overlays that require height adjustments to WWD facilities, shall not be subject to the notice language in this section. Whenever a WWD facility is required to be adjusted in height due to an asphalt overlay, WWD will be responsible for such adjustments. In lieu of WWD performing the adjustments, the City will consider a direct payment from WWD to the City for the City to perform such work when the City and WWD both agree that a direct payment is in the best interest of both parties. If WWD opts or is required to raise the facility themselves, the City will give WWD at least 60 days notice before such facility needs to be raised. If WWD provides direct payment, such payment shall be submitted to the City within 30 days of receiving the invoice.

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

(a) make payment to WWD at a time and upon terms acceptable to WWD for any and all costs and expense incurred by WWD in the Relocation of WWD's Facilities; and

(b) protect, defend, indemnify and save WWD 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 WWD's Facilities, to the extent such injury or damage is caused by the negligence or willful misconduct of the person or entity requesting the Relocation of WWD's Facilities or other negligence or willful misconduct of the agents, servants or employees of the person or entity requesting the Relocation of WWD's Facilities.

C. Any condition or requirement imposed by the City upon any person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development) which necessitates the Relocation of WWD's Facilities within the Franchise Area shall be subject to the provisions of

subsection 4(B). However, in the event the City reasonably determines (and promptly notifies WWD in writing of such determination) that the primary purpose of imposing such condition or requirement upon such person or entity which necessitates such Relocation is to cause the construction of an improvement solely on the City's behalf and in a manner consistent with City approved Capital Improvement plans within a segment of the Franchise Area, then the provisions of 4(A) will apply.

The provisions of this Section 4(C) shall in no manner preclude or restrict WWD from making any arrangements it may deem appropriate when responding to a request for Relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by such person or entity are not or will not become City owned, operated or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

D. This Section 4 shall govern all relocations of WWD's Facilities required in accordance with this Franchise. Any cost or expense in connection with the Relocation of any Facilities existing under benefit of easement or other rights not in the Franchise Area, excluding rights arising under any prior King County franchise, shall be borne by the City, provided the City obtains the District's prior consent to such location or relocation which will not be unreasonably withheld. Costs for Relocation of any Facilities existing under any prior King County franchise shall be borne solely by WWD.

E. WWD recognizes the need for the City to maintain adequate width for installation and maintenance of City owned utilities such as, but not limited to, sanitary sewer, water, 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. If adequate clear zones are unable to be achieved on a particular right-of-way, WWD 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.

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

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

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

However, regardless of its percentage of participation, the City will not be liable for WWD's costs of Relocation simply because a participating agency that would have been responsible for those costs was able to avoid paying WWD for those costs on a claim of exemption under state or federal law so long as the exempt agency was the entity to initiate the project. Further WWD will not be liable for the cost of Relocation that is being done for the benefit of a private development

Section 5. Indemnification.

A. WWD 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 WWD or its agents, servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted WWD 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; provided further, this indemnity provision shall not be construed to be a waiver of any legal obligation or duty WWD may have to charge the City and any legal obligation or duty the City may have for the cost of fire hydrants and related fire suppression services and facilities provided by WWD within the Franchise Area, nor shall this indemnity provision be construed to be a waiver of any legal obligation or duty WWD may have to charge the City for any services WWD may provide the City which are determined in the future to be a governmental function which the City should provide.

In the event any such claim or demand be presented to or filed with the City, the City shall promptly notify WWD thereof, and WWD shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand, provided further, that in the event any suit or action be begun against the City based upon any such claim or demand, the City shall likewise promptly notify WWD thereof, and WWD shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

B. Without limiting WWD's indemnification obligations that might arise for the reasons set forth in 5(A), City hereby releases and agrees to indemnity, defend and hold the District, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, costs, judgments, awards or liability to any person arising from District's compliance with this Franchise.

C. City hereby releases and agrees to indemnity, defend and hold the District, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, costs, judgments, awards or liability to any person to the extent they arose from City's decision to issue development permits based on accurate information on fire flow and water availability provided by WWD or the City's enforcement of the International Fire Code.

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

Section 6. Default. If WWD shall fail to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon WWD a written order to so comply within thirty (30) days from the date such order is received by WWD. If WWD is not in compliance with this Franchise after expiration of said thirty (30) day period, the City may act to remedy the violation and may charge the costs and expenses of such action to WWD. The City may act without the thirty (30) day notice in case of an emergency. The City may in addition, by ordinance adopted no sooner than five (5) days after notice of the City Council hearing (at which WWD will have an opportunity to be heard) on the impending ordinance is given to WWD, declare an immediate forfeiture of this Franchise, provided, however, if any material failure to comply with this Franchise by WWD cannot be corrected with due diligence within said thirty (30) day period (WWD's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control, in which case the time within which WWD may so comply shall be extended for such time as may be reasonably necessary and so long as WWD commences promptly and diligently to effect such compliance), provided good faith dispute does not exist concerning such compliance.

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

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, upon, and along the Franchise Area, which do not interfere with WWD'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. Subject to the provisions of Section 9 and 10 below, this Franchise is and shall remain in full force and effect from its Effective Date as defined in Section 20 herein until December 31, 2018, provided that on January 1, 2019, and on January 1 every five (5) years thereafter, the term shall automatically be extended for an additional five (5) years, unless either WWD or the City gives the other party written notice of non-renewal prior to any such renewal date; and provided further, however, WWD shall have no rights under this Franchise unless WWD shall, within thirty (15) days after the passage date of the Ordinance referred to in Section 20 herein, file with the City its written acceptance of this Franchise, in a form acceptable to the City Attorney. If the City gives WWD written notice of non-renewal prior to January 1, 2019, and the City, following the termination of this Franchise, assumes pursuant to Chapter 35.13A RCW, or as such statute may be modified or amended, all or any part of the District's Facilities located within the Franchise Area, the City shall pay the District at the time any such assumption is effective the greater of (1) the District's indebtedness allocated to the District's Facilities assumed by the City pursuant to applicable law, District revenue bond covenants or other contracts related to District capital debt, or (2) the depreciated value of District capital improvements undertaken in the Franchise Area since the Effective Date of this Franchise determined by the total project cost of all District capital improvements undertaken in the Franchise Area since the Effective Date of this Franchise amortized on a straight-line basis over a thirty five (35) year useful life.

Section 9. Non-assumption. In consideration for the franchise fee and acceptance of the other terms and conditions of this Franchise, the City agrees that it will not exercise its statutory authority to attempt to assume jurisdiction over WWD or any WWD responsibilities, property, facilities or equipment located within or without the City's corporate limits while this Franchise is in effect.

Section 10. Franchise Fee. In consideration for the rights granted WWD under this Agreement for Facilities in the Franchise Area, WWD agrees to pay to the City an annual franchise fee of $1.73 (one dollar and seventy three cents) per foot of the roads, streets, avenues, alleys, highways and rights-of-way of the City as now laid out, platted, dedicated or improved in WWD's service area within the present limits of the City (see Exhibit 1) in which the District has water Facilities, provided the franchise fee shall be adjusted annually on the anniversary of the Effective Date of the Franchise to include all Facilities constructed or abandoned subsequent to the prior anniversary date. For 2011 this results in a prorated fee of $73,500 (seventy three thousand and five hundred dollars), which will be raised by inclusion in WWD's rate calculation. The fee will be adjusted for inflation each January 1st thereafter during the term of this agreement using the June-to-June CPI-U index for the Seattle – Tacoma – Bremerton area for the preceding year, as the CPI-U more closely reflects the changes in real estate value. Said annual Franchise Fee shall be paid in equal quarterly installments. Fees for each calendar quarter shall be due thirty (30) days following the end of the calendar quarter. Should WWD be prevented by judicial or legislative action from paying any or all of the franchise fee, WWD shall be excused from paying that portion of the franchise fee. Should a court of competent jurisdiction declare, or a change in law make 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 WWD, then WWD's obligation to pay the fee to the City under this Section shall be terminated in accordance with and to the degree required to comply with such court action. WWD agrees that the franchise fee established by this Section is appropriate and that WWD will not be a party to or otherwise support legal or legislative action intended to result in judicial determinations or legislative action referred to above. City shall defend, indemnify and hold WWD harmless from and against any and all claims, suits, actions or liabilities (including costs and attorneys' fees) incurred or asserted against WWD directly or indirectly arising out of WWD's payment of the franchise fee as provided in this Franchise. However, if the Washington State Legislature authorizes the City to impose a utility, business and occupation tax, public utility tax, privilege tax, excise tax or other tax (collectively "utility tax") upon WWD based on WWD's revenues, or upon any other basis, WWD's payments herein to the City shall be credited against such a utility tax as the City may impose and WWD shall be obligated to pay only the statutorily defined tax liability in excess thereof. WWD shall have the right to recover the franchise fee from the WWD's ratepayers as it deems appropriate.

Section 11. Compliance with Codes and Regulations.

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

B. Upon written inquiry, WWD shall provide a specific reference to either the federal, state or local law establishing a basis for WWD's actions related to a specific franchise issue, provided this provision shall not be construed to limit, waive or modify WWD's right to privileged and confidential attorney-client communications.

C. In the event that any territory served by WWD is annexed to the City after the effective date of this Franchise, this franchise agreement shall be deemed to be the new agreement required to be granted to a franchisee in annexed territory by RCW 35A.14.900 for whatever period of time is then required under that statute or the remaining time left under this franchise agreement for the Franchise Area, whichever is longer. Such territory shall then be governed by the terms and conditions contained herein upon the effective date of such annexation. The first franchise fee for any annexed area shall be calculated pro rata from the effective date of the annexation to the end of the next calendar quarter and paid to the City at the same time as the fee for the Franchise Area is paid for that quarter.

Section 12. Location of Facilities and Equipment. With the exception of components that are traditionally installed above ground such as fire hydrants, blow-offs, vault lids, risers, manhole covers 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 City's Land Use Code and applicable development pre-approved plans.

Section 13. Record of Installations and Service. With respect to excavations by WWD and the City within the Franchise Area, WWD

and the City shall each comply with its respective obligations pursuant to Chapter 19.122, RCW and any other applicable state law.

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

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

Section 14. Shared Use of Excavations. WWD and the City shall exercise best efforts to coordinate construction work that either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other party and other utilities within the Franchise Areas informed of its intent to undertake such construction work. When feasible, the City and WWD shall consider joint projects. WWD 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.

If at any time, or from time to time, either WWD, 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) no statutes, laws, regulations or ordinances prohibit or restrict the proximity of other utilities or facilities to WWD's Facilities installed or to be installed within the area to be excavated;

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

(c) 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.

The City reserves the right to not allow open trenching for five (5) years following a street overlay or improvement project. WWD shall be given written notice at least 180 days prior to the commencement

of the project provided however that the City reserves the right to eliminate or reduced portions of the overlay or improvement project within the 180 day period. When the overlay or improvement project is eliminated or reduced, the City shall provide written notice to WWD within 60 days of such determination by the City. Required trenching due to an emergency will not be subject to five (5) year street trenching moratoriums or providing 180 days notice.

WWD will consider joint trench opportunities with other facilities if both parties are anticipating trenching within the same portion of the Franchise Area and provided that the terms of (a) and (b) above are met.

Section 15. Insurance. WWD shall maintain in full force and effect throughout the term of this Franchise, a minimum of One Million Dollars ($ 1,000,000.00) liability insurance for property damage and bodily injury.

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

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

Section 16. Vacation of Franchise Area. If the City determines to vacate any right-of-way which is part of the Franchise Area where WWD Facilities are located or maintained, any ordinance vacating such right-of-way shall provide and condition such vacation on WWD obtaining at no cost to WWD a perpetual easement in such vacated right-of-way for the construction, operation, maintenance, repair and replacement of its facilities located and to be located in such vacated right-of-way.

Section 17. Assignment. All of the provisions, conditions, and requirements herein contained shall be binding upon WWD, and no right, privilege, license or authorization granted to WWD hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold, condition or delay. Notwithstanding the foregoing, WWD may assign this agreement to an affiliate, parent or

subsidiary or as part of any corporate financing, reorganization or refinancing which does not require assignment to any but an affiliate, parent or subsidiary without the consent of, but upon notice to, the City.

Section 18. Notice. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any party (collectively, "notices") shall be in writing and shall be validly given or made to another party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United States Mail, certified, registered, or express mail with postage prepaid, or if sent by facsimile transmission with electronic confirmation. If such notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given one (1) business day after the deposit thereof with such delivery service. If such notice is mailed as provided herein, such shall be deemed given three (3) business days after the deposit thereof in the United States Mail. If such notice is sent by facsimile transmission, it shall be deemed given at the time of the sender's receipt of electronic confirmation. Each such notice shall be deemed given only if properly addressed to the party to whom such notice is to be given as follows:

To City:
Director of Finance and Administration
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033-6169
Fax: (425) 576-2921

To WWD :
General Manager
Woodinville Water District
17238 Northeast Woodinville Duvall Rd.
Woodinville, WA 98072-9674

With copy to:
General Counsel
Inslee, Best, Doezie & Ryder, PS
Symetra Financial Center
Suite 1900
777 - 108th Avenue N.E.
Bellevue, WA 98009

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 19. Miscellaneous. 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. 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.

In addition to the franchise fee due under Section 10 above, WWD shall further be subject to all permit fees associated with activities undertaken through the authority granted in this franchise ordinance or under the laws of the City. Where the City incurs cost and expenses for review, inspection, or supervision of activities undertaken through the authority granted in this franchise or any ordinances relating to the subject for which a permit fee is not established, WWD shall pay such costs and expenses directly to the City. In addition to the above, WWD shall promptly reimburse the City for any and all costs it reasonably incurs in response to any emergency involving WWD's facilities.

City shall have the right, but not the obligation, to take over control and ownership of Franchisee's Facilities in the Franchise Area, specifically including the water and sewer plant network, without compensation, if such facilities are abandoned by WWD. The parties recognize and acknowledge that the City is interested in retaining abandoned water and sewer lines for use as conduit for communication purposes and WWD shall notify the City at least 180 days prior to abandonment of any water or sewer line. In the event the City determines to assume ownership and control of any Facilities abandoned by WWD pursuant to this provision, WWD shall convey ownership of such Facilities to the City without warranty express or implied of the fitness of such Facilities for any purpose, and the City shall indemnify and hold the District harmless from any and all costs, fees, damages, liabilities and judgments, including attorneys' fees and costs, arising out of or relating to the City's ownership, control or use of such abandoned Facilities.

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 WWD of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement or document specifically:

(a) references this Franchise; and

(b) states that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

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

Section 20. Effective Date. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council ("Effective Date").

Passed by majority vote of the Kirkland City Council in open meeting this ___ day of _____, 2011.

Signed in authentication thereof this ___ day of _____, 2011.

_____
Mayor

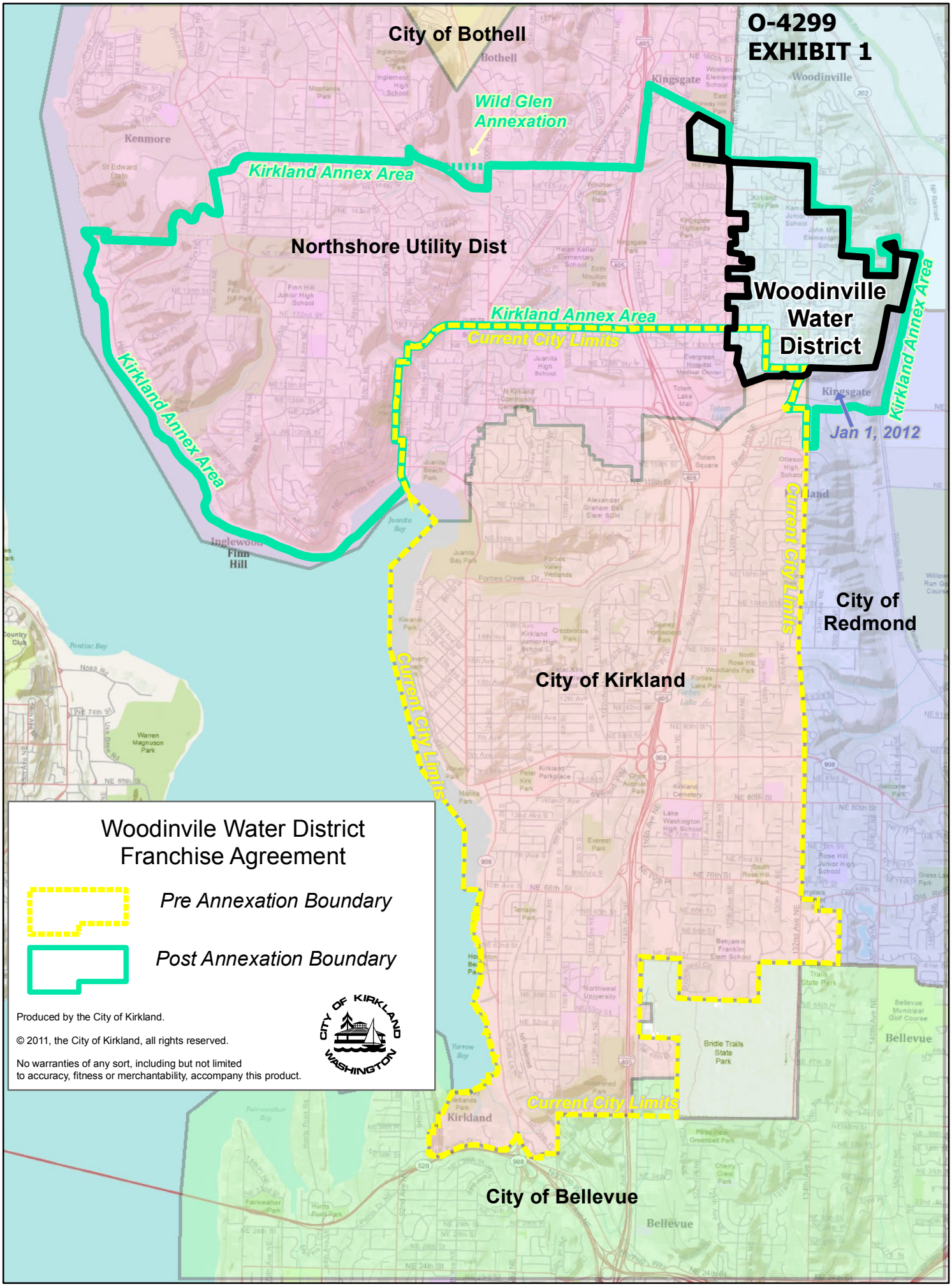
Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Attachment: Exhibit 1


O-4299
EXHIBIT 1
City of Bothell
Wild Glen Annexation
Kirkland Annex Area
Northshore Utility Dist
Kirkland Annex Area
Current City Limits
Woodinville Water District
Kirkland Annex Area
Kirkland Annex Area
Jan 1, 2012
Current City Limits
City of Redmond
City of Kirkland
Current City Limits
Current City Limits
City of Bellevue
Woodinville Water District
Franchise Agreement
Pre Annexation Boundary
Post Annexation Boundary
Produced by the City of Kirkland.
© 2011, the City of Kirkland, all rights reserved.
No warranties of any sort, including but not limited
to accuracy, fitness or merchantability, accompany this product.
CITY OF KIRKLAND WASHINGTON

PUBLICATION SUMMARY
OF ORDINANCE NO. 4299

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO GRANTING WOODINVILLE WATER DISTRICT, A WASHINGTON MUNICIPAL CORPORATION, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT AND MAINTAIN, REPAIR, REPLACE, OPERATE UPON, OVER, UNDER, ALONG AND ACROSS THE FRANCHISE AREA WATER AND SEWER FACILITIES FOR PURPOSES OF ITS WATER AND SEWER UTILITY BUSINESS.

SECTIONS 1 - 19. Provide for the grant of a franchise to Woodinville Water District of a franchise for water and sewer facilities.

SECTION 20. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2011.

I certify that the foregoing is a summary of Ordinance 4299 approved by the Kirkland City Council for summary publication.

_____
City Clerk