Council Meeting: 11/07/2012
Agenda: Public Hearings
Item #: 9. b.

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 Engineering Manager
William Evans, Assistant City Attorney
Ray Steiger, P.E., Public Works Director

Date: October 25, 2012

Subject: Amendment to the Woodinville Water District Franchise Agreement

RECOMMENDATION:

1. Conduct the first reading of the proposed ordinance authorizing the amendment of the existing Franchise Agreement with Woodinville Water District (WWD) and;

2. Conduct a public hearing to receive comments on the proposed amendment.

3. Direct staff to bring back the final ordinance at the next Council meeting on November 20, 2012.

BACKGROUND DISCUSSION:

On May 17, 2011, the City Council approved a franchise agreement with the Woodinville Water District (WWD). WWD provides water and sewer service to Kirkland residents in the northeast corner of the City's 2011 annexation area (see Attachment A-Vicinity Map). When staff negotiated the agreement with WWD, the existing Northshore Utility District (NUD) franchise agreement was used as a template to draft the WWD agreement and the two agreements (NUD and WWD) are nearly identical. During a recent review of the agreement by WWD staff, they realized that a key sentence had been inadvertently omitted as the City and WWD staff was finalizing the agreement in April of 2011. The language that was omitted resides in Section 8 of the agreement and is underlined below:

> **Section 8. Franchise Term**. Subject to the provisions of Sections 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; *in which case this Franchise shall terminate five (5) years after such renewal date* and provided further, however, WWD shall have no rights under this Franchise unless WWD shall, within fifteen (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.

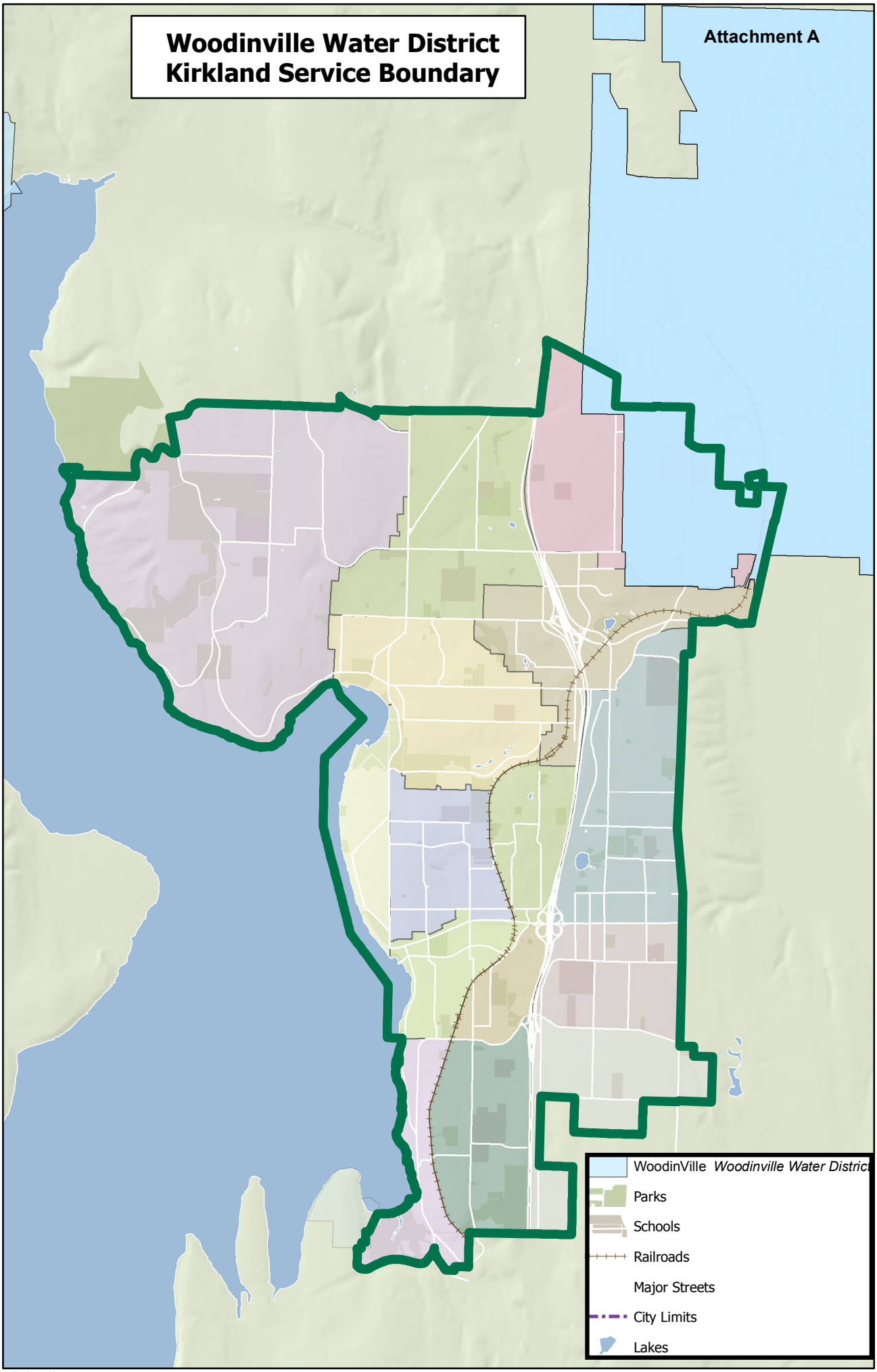
As mentioned above, this same language allowing for the five-year transition also resides in the NUD Agreement and it was always the intention of the City and WWD to include this language in the WWD agreement (it is unclear how this language was omitted from the version presented to Council). City staff is in full agreement that the franchise should be amended to include the language if the Council believes the original intent should govern its decision. The language gives WWD five years to prepare should the City decide that to proceed with assumption of the District (portion within Kirkland).

Any grant of a Franchise agreement requires a first reading of the agreement, a public hearing, and approval of the agreement at a subsequent meeting. As this amendment would have the effect of granting an additional five years to the franchise, the same procedure should be followed.

Attachments (2): Attachment A – Vicinity Map
Ordinance

Woodinville Water District
Kirkland Service Boundary

Attachment A



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CITY OF KIRKLAND WASHINGTON

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Author:
Name: woodinville water district
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Council Meeting: 11/07/2012
Agenda: Public Hearings
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ORDINANCE O-4382

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO AMENDMENT OF ORDINANCE O-4299 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; 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 drafted the "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" ("Franchise Agreement") to allow WWD to operate its facilities within the City right-of-way, which took effect in 2011; and

WHEREAS, language regarding the term of the Franchise Agreement was inadvertently left out of the Franchise Agreement, which requires an amendment as allowed by Section 19 of the Franchise Agreement to restore that missing language.

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

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City an Amendment of the Franchise Agreement, herein incorporated by reference, substantially similar to the Amendment attached hereto as Exhibit A.

Section 2. 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.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2012.

Signed in authentication thereof this _____ day of _____, 2012.

_____
MAYOR

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Amendment of the 2011 Franchise Agreement Granted to the Woodinville Water District by the City of Kirkland

This Amendment is entered into on this ____ day of _____, 2012, by and between the City of Kirkland ("City") and Woodinville Water District ("WWD") for the purposes of amending the 2011 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 ("Franchise Agreement"), herein incorporated by reference.

Whereas, language regarding the term of the Franchise Agreement was inadvertently left out of the Franchise Agreement, which requires an amendment as allowed by Section 19 of the Franchise Agreement to restore that missing language; and

Whereas, pursuant to RCW 35A.47.040, by ordinance the Kirkland City Council authorized the City Manager to amend the Franchise Agreement after two readings of the ordinance on November 7 and at its regular meeting of November 20, 2012,

Now, therefore, the City and WWD hereby agree as follows:

1. The Franchise Agreement is amended to read as follows:

<u>Section 8. Franchise Term</u>. 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; in which case this Franchise shall terminate five (5) years after such renewal date and provided further, however, WWD shall have no rights under this Franchise unless WWD shall, within fifteen (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.

2. Except as modified herein, all of the remaining terms and conditions of the Franchise Agreement remain in full force and effect.

CITY OF KIRKLAND

By: _____
Kurt Triplett, City Manager

Approved as to Form:

_____

WOODINVILLE WATER DISTRICT

By: _____
Ken Howe, General Manager

Council Meeting: 11/07/2012
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PUBLICATION SUMMARY
OF ORDINANCE O-4382

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO AMENDMENT OF ORDINANCE O-4299 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.

SECTION 1. Authorizes and directs the City Manager to execute on behalf of the City an Amendment of the Franchise Agreement relating to granting Woodinville Water District 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.

SECTION 2. 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 _____, 2012.

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

_____
City Clerk