



CITY OF KIRKLAND
Information Technology Department
123 Fifth Avenue, Kirkland, WA 98033 425.587.3050
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Janice Perry, Multimedia Communications Manager
Rob Jammerman, Developing Engineering Manager
William Evans, Assistant City Attorney

Date: October 7, 2008

Subject: Northshore Utility District Franchise

RECOMMENDATION

1. First reading of the proposed ordinance granting a franchise to Northshore Utility District (NUD) and;
2. Conduct a public hearing to receive comments on the proposed franchise.

POLICY IMPLICATIONS

This increases the revenue the city will generate from the Northshore Utility District for use of the city rights of way by approximately \$145,000 per year. This is a re-negotiated agreement and would replace the franchise adopted in December 2000. Citizens in the areas of Kirkland served by the Northshore Utility District may see an increase in their bills.

BACKGROUND DISCUSSION

Northshore Utility District (NUD) provided services to some pockets of Kirkland to the north. After the annexation of Juanita and Totem Lake areas, NUD wanted to enter into a franchise agreement to utilize our right of way and keep providing service in the newly annexed area. A franchise agreement was entered into December 2000.

Our franchise with NUD provided windows of opportunity where we could revisit the agreement. NUD continues to provide good service to Kirkland residents and businesses. We did however recognize the need to update the agreement to reflect inflation for the first time since adoption in 2000.

Significant changes to the franchise agreement include:

- Changing the method for calculating the franchise. The franchise fee charge will now be calculated using the linear feet of Kirkland right of way in the NUD service area (126,627 feet) multiplied by \$3.25 per foot versus a flat 5% fee. The change in fee calculation will result in an increase in revenue of approximately \$145,000 per year.

- The franchise fee will be included in NUD's rate calculation each year.
- A provision for inflation adjustment has been included in the new franchise agreement and will be adjusted each year per CPI-U for Seattle.
- We have clarified the responsibility for relocation costs.

ORDINANCE NO. 4141

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING NORTSHORE UTILITY 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 FOR PURPOSES OF ITS WATER AND SEWER UTILITY BUSINESS.

WHEREAS, Northshore Utility District ("NUD") was previously granted a franchise agreement to operate within the City of Kirkland ("City") limits under ordinance number 3767, approved on December 11th, 2000; and

WHEREAS, this existing agreement needed to be updated and NUD and the City have therefore re-negotiated the agreement;

NOW THEREFORE, 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) "NUD" means Northshore Utility 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 NUD's service area within the present limits of the City.

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

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

Section 2. Franchise.

A. Facilities within Franchise Area. The City does hereby grant to NUD 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 business as defined in RCW 82.04.065.

B. Permission Required to Enter Onto Other City Property. Nothing contained in this Ordinance is to be construed as granting permission to NUD 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, NUD shall fully comply with all applicable federal, state, and local laws and regulations.

Section 3. Non-interference of Facilities.

NUD'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 NUD from effecting temporary road closures as reasonably necessary during construction or maintenance of its Facilities provided NUD receives prior City approval, which shall not be unreasonably withheld. Whenever it is necessary for NUD, in the exercise of its rights under this Franchise, to make any excavation in the Franchise Area, NUD 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 NUD'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 NUD 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 NUD, 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 NUD 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 NUD shall be repaired to the City's specifications, within fifteen (15) days or upon five (5) days written notice to NUD by the City; if NUD 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 NUD shall pay the reasonable costs of such work to the City.

Section 4. Relocation of Facilities.

A. Whenever the City causes the grading or widening of the Franchise Area or undertakes construction of any water, sanitary sewer or storm drainage line, lighting, signalization, sidewalk improvement, pedestrian amenities, or other public street improvement [for purposes other than those described in section 4(B) below] and such project requires the relocation of NUD's then existing Facilities within the Franchise Area, the City shall:

(a) Provide NUD, at least ninety (90) days prior to the commencement of such project, written notice that a project is expected to require relocation; and

(b) Provide NUD with reasonable plans and specifications for such grading, widening, or construction and a proposed new location within the Franchise Area for NUD's Facilities.

After receipt of such notice and such plans and specifications, NUD shall relocate such Facilities within the Franchise Area so as to accommodate such street and utility improvement project; provided, however, NUD 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 NUD 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, NUD 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 NUD shall relocate its Facilities as otherwise provided in this Section 4. The City shall cooperate with NUD to designate a substitute

location for its Facilities within the Franchise Area. City will establish a date by which Facilities will be relocated, which date will be not less than sixty (60) days after written notice to NUD as to the facility to be relocated. NUD must finish relocation of each such Facility by the date so established. The cost of relocating such Facilities existing within the present limits of the City shall be paid as follows:

- (a) if the relocation occurs within six (6) years after NUD initially constructed such Facility, then the relocation shall be at the City's sole cost;
- (b) if the relocation occurs more than six (6) years but within ten (10) years after NUD initially constructed such Facility, then the City shall pay fifty percent (50%) of the cost of such relocation and NUD shall pay the remaining fifty percent (50%); and
- (c) if the relocation occurs more than ten (10) years after NUD initially constructed such Facility, then the relocation shall be at NUD's sole cost.
- (d) For the purpose of planning, NUD 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.

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

- (a) make payment to NUD at a time and upon terms acceptable to NUD for any and all costs and expense incurred by NUD in the relocation of NUD's Facilities; and
- (b) protect, defend, indemnify and save NUD 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 NUD'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 NUD's Facilities or other negligence or willful misconduct of the agents, servants or employees of the person or entity requesting the relocation of NUD'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 NUD'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 NUD 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 on the City's behalf and in a manner consistent with City approved improvement plans [as described in 4(A) above] within a segment of the Franchise Area then:

NUD shall require only those costs and expenses incurred by NUD in integrating and connecting such relocated Facilities with NUD's other Facilities to be paid to NUD by such person or entity, and NUD shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with the provisions of subsection 4(A) above.

The provisions of this Section 4(C) shall in no manner preclude or restrict NUD 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.

E. This Section 4 shall govern all relocations of NUD's Facilities required in accordance with this Franchise. Any cost or expense in connection with the location or 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. Costs for location or relocation of any Facilities existing under any prior King County franchise shall be borne solely by NUD.

F. NUD 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, NUD 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.

G. 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:

1. the City is lead agency for the project or improvement, and

2. 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 never be liable for NUD's costs of location or relocation simply because a participating agency that would have been responsible for those costs was able to avoid paying NUD 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.

Section 5. Indemnification. NUD 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 NUD or its agents, servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted NUD in this Franchise; provided, however, such indemnification shall not extend to injury or damage caused by the negligence or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.

In the event any such claim or demand be presented to or filed with the City, the City shall promptly notify NUD thereof, and NUD 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 NUD thereof, and NUD 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.

Section 6. Default. If NUD shall fail to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon NUD a written order to so comply within thirty-days from the date such order is received by NUD. If NUD is not in compliance with this Franchise after expiration of said thirty-day period, the City may act to remedy the violation and may charge the costs and expenses of such action to NUD. The City may act without the thirty-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 NUD will have an opportunity to be heard) on the impending ordinance is given to NUD, declare an immediate forfeiture of this Franchise, provided, however, if any material failure to comply with this Franchise by NUD cannot be corrected with due diligence within said thirty (30) day period (NUD'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 NUD may so comply shall be extended for such time as may be

reasonably necessary and so long as NUD 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 NUD 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 NUD 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 NUD'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 January 1, 2009 until December 31, 2013, provided that on January 1, 2014, and on January 1 every five (5) years thereafter, the term shall automatically be extended for an additional five (5) years, unless either NUD 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, NUD shall have no rights under this Franchise nor shall NUD be bound by the terms and conditions of this Franchise unless NUD shall, within thirty (30) days after the passage date of the Ordinance, file with the City its written acceptance of this Franchise, in a form acceptable to the City Attorney. On any renewal date, the City has the option of extending the term for more than 5 years but all subsequent renewal dates would remain automatically five (5) years unless the City again opted to extend any of them for more than five (5) years.

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 assume jurisdiction over NUD or any NUD responsibilities, property, facilities or equipment within the City's corporate limits while this Franchise is in effect.

Section 10. Franchise Fee. In consideration for the rights granted NUD under this Agreement for Facilities in the Franchise Area, NUD agrees to pay to the City an annual franchise fee of \$3.25 per foot of the 126,627 feet of the roads, streets, avenues, alleys, highways and rights-of-way of the City as now laid out, platted, dedicated or improved in NUD's service area within the present limits of the City. For 2009 this results in a fee of \$411,538, which fee will be raised by inclusion in NUD's rate calculation for ratepayers within City limits. 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 four

equal quarterly installments. Fees for each calendar quarter shall be due thirty (30) days following the end of the calendar quarter. Should NUD be prevented by judicial or legislative action from paying any or all of the franchise fee, NUD 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 NUD, then NUD'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. NUD agrees that the franchise fee established by this Section is appropriate and that NUD 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 NUD harmless from and against any and all claims, suits, actions or liabilities (including costs and attorneys' fees) incurred or asserted against NUD directly or indirectly arising out of NUD's payment of the franchise fee as provided in this Franchise. If new roads, streets, avenues, alleys, highways and rights-of-way of the City are added to the Franchise Area, the City will notify NUD no more than once per year of the number of feet added, which amount will then be added to the calculation of the franchise fee for the next calendar quarter.

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. 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 NUD shall be performed by NUD 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 fees, and applicable safety standards then in effect or any Memorandum of Understanding with NUD.

B. Upon written inquiry, NUD shall provide a specific reference to either the federal, state or local law or the Washington Utilities and Transportation Commission ("WUTC") order or action establishing a basis for NUD's actions related to a specific franchise issue.

C. In the event that any territory served by NUD 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 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 NUD and the City within the Franchise Area, NUD 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, NUD 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 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 NUD 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. NUD and the City shall exercise best efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other party and other utilities within the Franchise Areas informed of its intent to undertake such construction work. NUD 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 NUD, the City, or another franchisee, shall cause excavations to be made within the Franchise Area, the party causing such excavation to be made shall afford the others, upon receipt of a written request to do so, an opportunity to use such excavation, provided that:

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

(b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties. The parties shall each cooperate with other utilities in the Franchise Area to minimize hindrance or delay in construction.

The City reserves the right to not allow open trenching for five (5) years following a street overlay or improvement project. NUD shall be given written notice at least ninety (90) days prior to the commencement of the project. Required trenching due to an emergency will not be subject to five (5) year street trenching moratoriums.

The City reserves the right to require NUD to joint trench with other facilities if both parties are anticipating trenching within the same portion of the Franchise Area and provided that the terms of (a) and (b) above are met.

Section 15. Insurance. NUD 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 NUD for the purpose of complying with the requirements of this Section.

In satisfying the insurance requirement set forth in this section, NUD may self-insure against such risks in such amounts as are consistent with good utility practice. NUD 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) is being so maintained by NUD. Such written evidence shall include, to the extent available from NUD's insurance carrier, a written certificate of insurance with respect to any insurance maintained by NUD in compliance with this Section.

Section 16. Tariff Changes. If NUD shall file, pursuant to Chapter 80.28 RCW, with the WUTC (or its successor) any tariff affecting the City's rights arising under this Franchise, NUD shall give the City Clerk written notice thereof within five (5) days of the date of such filing.

Section 17. Assignment. All of the provisions, conditions, and requirements herein contained shall be binding upon NUD, and no right, privilege, license or authorization granted to NUD 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, NUD 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: Multimedia Communications Manager
 City of Kirkland
 123 Fifth Avenue
 Kirkland, WA 98033-6169
 Fax: (425) 576-2921

To NUD: General Manager
 Northshore Utility District
 6830 NE 185th St.
 Kenmore, WA 98028
 Fax:(425) 398-4435

With copy to: Kinnon Williams
 Williams & Williams, PSC
 18806 Bothel Way NE Bothell, Washington 98011-1933
 Fax: (425) 485-8449

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, NUD shall pay for the City's reasonable administrative costs in drafting and processing this franchise agreement and all work related thereto. NUD 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, NUD shall pay such costs and expenses directly to the City. In addition to the above, NUD shall promptly reimburse the City for any and all costs it reasonably incurs in response to any emergency involving NUD's facilities.

City has 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 (1) such facilities are abandoned; or (2) in the event this Franchise is terminated and Franchisee does not remove such facilities at its own expense within a reasonable period of time. Furthermore, the City is specifically interested in retaining abandoned water and sewer lines for use as conduit for communication purposes and NUD shall notify the City at least 180 days prior to abandonment of any water or sewer line.

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 NUD 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.

This Franchise is subject to the provisions of any applicable tariff now or hereafter on file with the WUTC or its successor. In the event of any conflict of inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control.

Section 20. Termination of Prior Franchise Agreement. Upon NUD's acceptance of this franchise agreement in accordance with Section 8 above, the prior Franchise Agreement negotiated in December 2000 and previously approved under City Ordinance No. 3767 and NUD Resolution No. 2000-11-20 shall be deemed terminated on December 31, 2008. The terms and conditions of that 2000 Franchise Agreement shall have no further force and effect after that date.

Section 21. Effective Date. The franchise agreement established in this ordinance shall go into effect and become the new NUD Franchise Agreement as of January 1, 2009.

Section 22. 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 regular meeting this ____ day of _____, 2008.

Signed in authentication thereof this ____ day of _____, 2008.

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

PUBLICATION SUMMARY OF
ORDINANCE NO. 4141

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

SECTIONS 1-15. Provide for: the grant to Northshore Utility District of a franchise for a water and sewer utility business for 10 years on specified terms and conditions with the possibility of 5 year or, at the City's discretion, longer, extensions thereafter, payment of franchise fees to the City and non-assumption of NUD facilities within Kirkland for as long as the franchise is in effect or, in the event of annexation, as long as required by RCW 35A.14.900, whichever is later.

SECTIONS 16-21. Sets forth administrative provisions and establishes the effective date of this new franchise.

SECTION 21. 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 regular meeting on the _____ day of _____, _____.

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

City Clerk