

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Ordinance No. 307 Extending Ronald Wastewater District's Franchises and Approval of Tentative Agreement Memorandum on Terms of an Interlocal Operating Agreement with Ronald Wastewater District (RWD)
DEPARTMENT:	City Manager's Office
PRESENTED BY:	Steven C. Burkett, City Manager

PROBLEM/ISSUE STATEMENT:

In December 2001, the City Council approved a six-month extension of the RWD's franchise for sanitary sewer service and a shortening of the old SPU franchise assumed by RWD, both to run until June 30, 2002. This extension was to allow RWD additional time to assimilate the SPU service area and for the City and RWD to negotiate a long-term franchise and interlocal agreement (ILOA) governing the transition to City-provided service at the end of the franchise term. The franchise and ILOA are not expected to be ready for the June 24th agenda. However, the City Manager and General Manager for RWD have reached tentative agreement on the essential terms for these two instruments which are set out in their Tentative Agreement Memorandum (Attachment A). Council action is needed to preserve the status quo for three months in order to give the City and RWD time to finalize the form of the franchise and ILOA and submit to the Council, and RWD's Board of Commissioners.

ALTERNATIVES ANALYZED:

The options available are:

1. Adopt the proposed ordinance extending both RWD's current franchise and the SPU franchise assumed by RWD through September 30, 2002.
2. Take no action- RWD's franchises would expire on June 30, 2002 under the terms established by Ordinance No. 296 passed in December 2002.

FINANCIAL IMPACT:

The 2002 budget conservatively included \$202,444 in revenue from the franchise fee payment under the assumed SPU franchise. Only half of this amount will have been paid by the existing termination date of June 30. Extending both franchises under their existing terms will maintain current budget revenue projections. Not extending the current franchises could result in a revenue shortfall for the period no agreements are in place.

RECOMMENDATION

- Staff recommends council approval of the tentative agreement memorandum (Attachment A).
- Staff recommends that council adopt Ordinance No. 307 Extending Ronald Wastewater District's Franchises To Provide Sanitary Sewer Service.

Approved By: City Manager  City Attorney 

INTRODUCTION

Time is needed for the Ronald Wastewater District and the City to complete the work outlined in a 1997 interlocal agreement to consolidate sewer service within the City and provide for the eventual assumption of this utility service by the City. The proposed ordinance will preserve the status quo and provide time to complete final drafts and submit for approval by the City and District.

BACKGROUND

The City's franchises were last addressed in a December 10, 2001 staff report. At that time there was discussion of the progress made to implement a 1997 interlocal agreement to have the District acquire the Seattle Public Utility service area within the City and to negotiate uniform rates, franchise fees and the future assumption of the District. The District had completed its acquisition of the SPU service area by October 1, 2001 but there had not been enough time to negotiate the future relationship and franchise fees between the two agencies.

To allow more time to negotiate, the Council and District extended the existing District franchise, which was about to terminate at the end of 2001, to June 30 2002. The extension franchise ordinance, Ordinance No. 296, also terminated the assumed SPU franchise as of this same date. The SPU franchise would otherwise have extended to December 31, 2003. The payment of franchise fees for the original SPU franchise service area and nonpayment of franchise fees for the Ronald franchise service area was continued under the extension franchise.

Since the six-month extension was approved, City and District representatives have met regularly to negotiate these agreements. While a tentative agreement on key issues has been reached the final franchise and long-term agreement are not yet in final form, and the process has taken longer than anticipated last December. In particular, the issues of compensation, term and transition of service delivery to the City have not been easy compromises for either agency.

ALTERNATIVES ANALYSIS

The action proposed and the no action alternatives are:

1. Adopt the proposed ordinance extending both the District's current franchise and the SPU franchise assumed by the District through September 30, 2002.
2. Take no action- The District's franchises would expire on June 30, 2002 under the terms established by Ordinance No. 296 passed in December 2002.

With or without the proposed extension the parties will continue to work toward finalization of the franchise and ILOA. The franchise is essentially ready with an exchange between attorneys for the parties of what should be the final draft. However, the most difficult terms are to be included in the concomitant ILOA which is now being drafted following the recent tentative agreement of principal issues. There are a number of minor points that have yet to be addressed which must be included to make the ILOA a comprehensive guide to the working relationship between the City and District and the eventual assumption of wastewater services by the City. This process

is expected to be concluded within the three-month extension requested in the proposed extension franchise ordinance.

Of course, the increased compensation anticipated with the long-term agreements will not be realized until the long-term agreements are approved by both parties, the current revenue received under the existing franchises will terminate if they are not extended. This is projected at \$202,444.

Staff does not believe it is in the City's interest to have a lapse in the other provisions of the existing franchises. The franchise allows a blanket permit system which is more cost effective than project-by-project right-of-way site permit issuance for both the City and District. The municipal code does not allow the blanket permit for utilities that do not have a franchise in good standing. Other provisions governing the use of the City's right-of-way would also terminate including indemnification of the City, coordination of planning for utility services and right-of-way use, and relocation obligations of the District.

DISCUSSION OF TENTATIVE AGREEMENT

The tentative agreement memorandum has been approved by the District General Manager and City Manager. It includes agreement on the key issues of the franchise and ILOA subject to final approval by the Council and the District Commissioners. Issues have been resolved as follows:

- **Term.** Both agreements will be coordinated with the same term which will be 15 years from the date agreements are fully executed. The District proposed a 20-year term. The City franchise ordinance limits franchises to fifteen although the City had sought a ten-year term so that the transition in services to a City utility operation could occur sooner.
- **Assumption.** The ILOA will include a schedule to transition operations from the District to the City over the last two years, with preliminary discussions beginning three years before the end of the agreements. Both parties will agree to amend their respective comprehensive planning documents to specifically include this change in the means of providing wastewater service in Shoreline at the earliest opportunity.
- **Compensation.** There will be a flat fee to recover franchise administrative costs but the principal compensation for occupation of the right of way by the Ronald District's facilities and forbearance of the City's assumption of the utility during the period of the franchise will be detailed in the ILOA. The total compensation paid in 2002 will be \$500,000, which is approximately 6% of present gross revenue. Payments will increase to \$550,000 in 2003, \$600,000 in 2004 and increase at a rate of 3% annually thereafter until termination.
- **Coordinated Service Delivery.** The District and City will commit to a high level of coordination in operations to coordinate and maximize the quality and value of service to Shoreline ratepayers. Areas of potential cooperation include vehicle maintenance, facility use, "one stop" permitting, inventory sharing, communications systems, mutual aid, emergency management, and training. The objective will be to reduce total costs to ratepayer and taxpayers wherever possible.

RECOMMENDATION

- Staff recommends Council approval of the tentative agreement memorandum (Attachment A)
- Staff recommends that Council adopt Ordinance No. 307 Extending Ronald Wastewater District Franchises To Provide Sanitary Sewer Service.

ATTACHMENTS

- Attachment A- Tentative Agreement Memorandum
- Attachment B- Proposed Ordinance No. 307

Attachment A

TENTATIVE AGREEMENT OF TERMS OF PROPOSED AGREEMENT BETWEEN CITY OF SHORELINE AND RONALD WASTEWATER DISTRICT (6/10/02)

The City of Shoreline (City) and Ronald Wastewater District (RWD) have negotiated in good faith and reached a tentative agreement on the following terms to be incorporated in an Interlocal Operating Agreement ("ILOA" or "Agreement") and new Franchise Agreement ("Franchise") subject to ratification by the Shoreline City Council and RWD Commission:

OBJECTIVES OF AGREEMENTS:

- Establish certainty and stability in provision of wastewater service to the residents and businesses within the City.
- Provide the City with revenues reasonable compensation for the City's grant to RWD of the right and privilege to use the City's Rights-of-Way within which RWD sanitary sewer system is located, and for which the District is granted a franchise concurrently.
- Provide RWD with the certainty of operation/ownership of the wastewater utility sufficient to facilitate a proper Capital Improvement Program and required long-term financing.
- Provide both the City and RWD with an orderly and predictable transition of the wastewater utility from RWD to City ownership.

AGREEMENT TERMS:

- The term of the ILOA and Franchise shall be 15 years from the effective date.
- In consideration for the ILOA fee and acceptance of the other terms and conditions of the Agreement, the City agrees that it will not exercise its statutory authority to assume jurisdiction over RWD during the term of the Agreement.
- In consideration for the City's forbearance of its assumption rights during the term of the agreement and the use of the City Rights-of-Way, RWD agrees to pay the City an Interlocal Operating Agreement Fee as provided for in the attached schedule (Exhibit A).

- The Franchise Agreement will govern RWD's use of the sanitary sewer system within the City's Rights-of-Way.
- RWD will be merged into the City at the termination of the 15-year Agreement. Both parties will agree to amend their respective comprehensive planning documents to specifically include this change in the means of providing wastewater service in Shoreline at the earliest opportunity.
- The Agreement provides for a transition period prior to the Agreement termination to plan for and implement a smooth transition to City assumption.
- During the term of the Interlocal Agreement, the General Manager of RWD and the City Manager of Shoreline will provide the Council and RWD's Board of Commissioners respectively, annual briefings on capital improvement and operating budget plans.
- The franchise fee paid annually by RWD will be \$3,000. In addition RWD shall continue to pay those fees associated with Right-of-Way permits, opening permits and blanket permit fees included in the Franchise.
- During the term of the Interlocal Agreement the City agrees not to impose a utility tax, or any new fees on RWD for City costs and services addressed and compensated for in the franchise or the IOLA.
- The ILOA will outline a process to identify and implement improved coordination and maximum quality of service and value to the ratepayers and taxpayers of Shoreline.
- RWD agrees not to engage in or attempt to provide a water supply system or stormwater system to the residents within the City's boundaries without the consent and approval of the City.
- RWD agrees upon completion of annexation by Lake Forest Park of sewer service areas within that city's boundaries, the District will proceed with applications for annexation of all areas not currently within the District's boundaries except for the area in the Highland Sewer District. The City agrees it will cooperate with and use its best efforts to assist the District in the annexation process.
- The parties agree that the District shall within a reasonable time attempt to create a standard set of billing rate structures by class of customer throughout the City.

Dated: _____

Dated: _____

 Steven C. Burkett
 Shoreline City Manager

 Philip Montgomery
 Ronald Wastewater District General Manager

EXHIBIT A

**CITY OF SHORELINE/RONALD WASTEWATER DISTRICT
INTERLOCAL AGREEMENT FEE**

<u>YEAR</u>	<u>AMOUNT</u>
2002	\$500,000
2003	\$550,000
2004	\$600,000
2005	\$618,000
2006	\$637,000
2007	\$656,000
2008	\$676,000
2009	\$696,000
2010	\$717,000
2011	\$739,000
2012	\$761,000
2013	\$784,000
2014	\$808,000
2015	\$832,000
2016	\$857,000
2017	\$883,000

- **In the year 2002, the \$500,000 Interlocal Agreement fee will be paid in full prior to December 31, 2002 by RWD less any previously paid fees provided by Seattle Public Utilities**
- **In all subsequent years the Interlocal Agreement fee will be paid quarterly with payments being made on the following dates each year:**
 - ✓ **March 15**
 - ✓ **June 15**
 - ✓ **September 15**
 - ✓ **December 15**
- **In the final year, 2017, the amount will be prorated to date of termination**

Attachment B

ORDINANCE NO. 307

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, EXTENDING THE FRANCHISES UNDER WHICH THE RONALD WASTEWATER DISTRICT (FORMERLY KNOWN AS SHORELINE WASTEWATER MANAGEMENT DISTRICT) IS AUTHORIZED TO PROVIDE SANITARY SEWER SERVICES WITHIN THE CITY OF SHORELINE.

WHEREAS, the City of Shoreline, by Shoreline City Ordinance No. 152, granted the Ronald Wastewater District (District) a non-exclusive Franchise to construct, maintain, operate, replace and repair a sanitary sewer system, in, under, through and below certain designated public rights-of-way of the City effective March 8, 1998; and

WHEREAS, the Franchise granted to the District by the City through Ordinance No. 152, as amended by Ordinance No. 175, was extended by Ordinance No. 267 through December 31, 2001; and

WHEREAS, on October 1, 2001 the District acquired Seattle Public Utilities' (SPU) facilities, accounts, and service area within Shoreline; and

WHEREAS, SPU's operating franchise granted by Ordinance No. 215 was assigned to the District effective October 1, 2001, by assumption agreement approved by the City pursuant to Ordinance No. 215; and

WHEREAS, the terms of District's franchises were extended to June 30, 2002 by Ordinance 296 passed December 10, 2001; and

WHEREAS, both the City and the District are committed to developing new agreements to guide their relationship; and

WHEREAS, the District and the City agree that it is in the best interest of sanitary sewer customers and the City that the District continue to operate under a City franchise and that the status quo be preserved for a reasonable period of time to complete the present negotiations of a franchise agreement and concomitant interlocal agreement as envisioned by the parties in their interlocal agreement dated August 13, 1997;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Franchise Extension. The sanitary sewer franchise granted pursuant to City Ordinance No. 296, is hereby extended through the earlier of September 30, 2002, or until the effective date of a replacement franchise (whichever first occurs). The terms of this franchise shall apply to the area of the City serviced by the District under Ordinance No. 296. This franchise shall, in that area, also control over any conflicting provisions of the sanitary sewer

franchise granted to SPU pursuant to City Ordinance No. 215 and assigned to the District effective October 1, 2001.

Section 2. Franchise Amendment. The sanitary sewer franchise granted pursuant to City Ordinance No. 215, is hereby amended to end its effective term on September 30, 2002, or upon the effective date of a replacement franchise (whichever first occurs). The terms of this franchise shall apply to the area of the City serviced by SPU at the time of its adoption. The parties further stipulate that the Franchise Fee payment methodology utilized by SPU and as continued by the District satisfy the Franchise Fee payment requirements of this franchise. The City hereby waives any right to audit or otherwise seek revision or reconciliation of the District's satisfaction of this payment obligation during the remaining term of this franchise as long as the District continues to adhere to SPU's payment methodology.

Section 3. Directions to City Clerk. The City Clerk is hereby authorized and directed to forward certified copies of this ordinance to the Grantee set forth in this ordinance. The Grantee shall have fifteen (15) days from receipt of the certified copy of this ordinance to accept in writing the extension of the franchise granted to the Grantee in this ordinance.

Section 4. Publication and Effective Date. In accord with state law, this ordinance shall be published in full and shall take effect five days after said publication.

PASSED BY THE CITY COUNCIL ON June 24, 2002.

Mayor Scott Jepsen

ATTEST:

APPROVED AS TO FORM:

Sharon Mattioli, CMC
City Clerk

Ian Sievers, City Attorney

Date of Publication: June 27, 2002
Effective Date: July 2, 2002