

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Ordinance No. 800 – Granting the Ronald Wastewater District a Non-Exclusive Franchise to Construct, Maintain, Operate, Replace and Repair a Sanitary Sewer System within Public Rights-of-Way
DEPARTMENT:	City Manager’s Office
PRESENTED BY:	John Norris, Assistant City Manager
ACTION:	<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

On October 14, 2002, the Shoreline City Council, via the adoption of Ordinance No. 306, granted the Ronald Wastewater District (District) a 15 year franchise. This franchise expires on October 22, 2017.

Also in 2002, the City and the District entered into a 15-year Interlocal Operating Agreement (IOA) in regards to sanitary sewer (wastewater) services. At the end of this 15 year term, which occurs on October 22, 2017, the mutual goal was for the City to fully assume the District as specifically authorized by RCW 35.13A. However, additional time is now needed to effectuate the orderly, seamless transition of governance of the District. To this end, on June 12, 2017, the City Council adopted a First Amendment to the 2002 IOA which allows for a two year extension of the IOA, with an option for the City to extend for an additional two years.

Given this IOA extension, the current Franchise Agreement that the District operates under must also be extended concurrent with the IOA extension. Proposed Ordinance No. 800 would provide for a new Franchise Agreement with the District that would cover a term concurrent with the IOA extension. Council discussed proposed Ordinance No. 800 on October 2, 2017 and directed staff to bring back the proposed ordinance for adoption.

RESOURCE/FINANCIAL IMPACT:

This Franchise will have no financial impact to the City. The franchise fees that the City currently receives from the Ronald Wastewater District will continue under this new Franchise Agreement.

RECOMMENDATION

Staff recommends that Council adopt proposed Ordinance No. 800.

Approved By: City Manager ***DT*** City Attorney ***MK***

BACKGROUND

On October 14, 2002, the Shoreline City Council, via the adoption of Ordinance No. 306, granted the Ronald Wastewater District (District) a 15-year franchise. This franchise will expire on October 22, 2017.

Also in 2002, the City and the District entered into a 15-year Interlocal Operating Agreement (IOA) in regards to sanitary sewer services. At the end of this 15 year term, which is also on October 22, 2017, the mutual goal was for the City to fully assume the District as specifically authorized by RCW 35.13A.

As the City Council is aware, numerous steps have been taken to achieve the assumption of the District by the City, including but not limited to, the joint development of an Assumption Transition Plan, the filing of notice of intentions with boundary review boards in King and Snohomish Counties, and the City defending its authority to assume the entirety of the Ronald Wastewater District in various court proceedings. The City's actions in regards to the boundary review boards, in both King and Snohomish Counties, and the courts have resulted in the need for additional time to effectuate an orderly, seamless transition of governance of the District, which has long been the goal of the City, so as to ensure no disruption in this public service for the community.

To this end, on June 12, 2017, the City Council adopted a First Amendment to the 2002 Interlocal Agreement which allows for a two (2) year extension of the IOA, with an option for the City to extend for an additional two (2) years. Given this extension of the IOA and the expiration of the current Franchise Agreement that the District operates under, a new Franchise Agreement must be granted that is concurrent with the extension authorized by First Amendment to the IOA. The reason that a new franchise must be granted, as opposed to an extension of the existing franchise, is because Shoreline Municipal Code (SMC) Section 12.25.080 states that a right-of-way franchise agreement shall not exceed 15 years. Thus, this SMC precludes the City from simply extending the existing franchise, requiring the granted of a new franchise agreement so as not to be in conflict with the SMC's time limitation.

Council discussed proposed Ordinance No. 800 (Attachment A) on October 2, 2017.

The staff report for this Council discussion can be found at the following link:

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2017/staffreport100217-8c.pdf>.

At this discussion, Council directed staff to bring back the proposed ordinance for adoption. The District Board has also reviewed the proposed ordinance. Once adopted by the City Council, the District must accept the Franchise Agreement in writing.

DISCUSSION

Proposed Ordinance No. 800 would provide for a new Franchise Agreement with the Ronald Wastewater District. As can be seen in proposed Ordinance No. 800, the terms

of the newly proposed Franchise are nearly identical to the District's current franchise agreement except for minor 'housekeeping' edits and changes the following sections:

- **Recitals, “Whereas” Clauses:** The recitals for the Franchise have been updated to reflect the new Franchise Agreement with the District and to reflect the forthcoming Wastewater Utility Operating Services Agreement.
- **Section 1, Definitions:** The definitions for “Ronald” and “Ronald Wastewater District Sewer Service Area” were adjusted slightly so that they are consistent with the definitions of these terms as proposed in the forthcoming Wastewater Utility Operating Services Agreement. As well, the definitions for “Wastewater System”, “Wastewater Utility”, and “Wastewater Utility Operating Services Agreement” were added to reflect congruency with the forthcoming Wastewater Utility Operating Services Agreement.
- **Subsection 4.6, Blanket Permit:** This subsection currently states that Minor Activities and Blanket Activities are defined in a separately negotiated document, titled “Blanket Permit for Activities within the Public Right-of-Way”. This document was filed with the City Clerk’s Office using a specific Receiving Number. The content from the Blanket Permit has been updated and put into Exhibit A to the Franchise so that it now resides with the Franchise itself rather than in a separate location.
- **Subsection 4.9, Work Performed or Managed by the City:** Subsection 4.9 was added to the Franchise to exempt City staff working on behalf of the utility under the forthcoming Wastewater Utility Operating Services Agreement from needing a Right-of-way permit to perform or manage work in the Right-of-way on the District’s facilities. This permit requirement is still in place for the District, as all capital projects that the District would perform would be controlled by the District and subject to the permitting requirements in the franchise. Any repairs or other work that the City’s utility maintenance staff would perform or manage would be exempted.
- **Section 10, Insurance:** The insurance provisions in the Franchise were adjusted so that they are consistent with the provisions as proposed in the forthcoming Wastewater Utility Operating Services Agreement.
- **Section 12, Franchise Term:** The term of the Franchise Agreement was adjusted from 15 years to the term of the First Amendment of the 2002 Interlocal Operating Agreement, which is for two years from the effective date of the First Amendment of the 2002 Interlocal Operating Agreement plus, at the City’s sole option, an additional two years.
- **Section 14, Franchise Fee:** The date of the 2002 Interlocal Operating Agreement and the First Amendment to the Interlocal Operating Agreement were added to this section for context; the franchise fee itself is not being amended.
- **Section 19, Notice:** The responsible parties for the Franchise and their contact information was updated.
- **Exhibit A, Blanket Permit:** This section was updated as follows:
 - To remove the signature block and other content that was used when the Blanket Permit was a separate document outside of the Franchise Agreement;

- To acknowledge that the City will most likely be performing Minor Activities in the Right-of-way on behalf of the District; and
- To update the permit fee associated with the Blanket Permit so that it comports to the Blanket Permit Fee in the City's Fee Schedule.

RESOURCE/FINANCIAL IMPACT

This new franchise agreement will have no financial impact to the City. The franchise fees that the City currently receives from the Ronald Wastewater District will continue under this new franchise.

RECOMMENDATION

Staff recommends that Council adopt proposed Ordinance No. 800.

ATTACHMENTS

Attachment A: Proposed Ordinance No. 800

ORDINANCE NO. 800

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, GRANTING RONALD WASTEWATER DISTRICT A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A SANITARY SEWER SYSTEM WITHIN PUBLIC RIGHTS-OF-WAY OF THE CITY OF SHORELINE, WASHINGTON.

WHEREAS, pursuant to its authority in RCW 35A.11.020 and RCW 35A.47.040, on October 14, 2002, the Shoreline City Council passed Ordinance No. 306 granting the Ronald Wastewater District (hereinafter “Ronald”) a non-exclusive franchise to construct, maintain, operate, replace, and repair a sanitary sewer system within public rights-of-way of the City of Shoreline during the term of which the City would not assume Ronald; and

WHEREAS, the term of the Franchise is 15 years from the effective date; the Franchise is currently set to expire on October 22, 2017; and

WHEREAS, on October 22, 2002, the City and Ronald entered into an Interlocal Operating Agreement (hereinafter, “2002 IOA”) that, among other things, provided for an orderly and predictable transition of Ronald to City ownership; the 2002 IOA also provided for a 15 year term; and

WHEREAS, on June 12, 2017, by motion, the City Council approved the First Amendment to the 2002 IOA and, on June 13, 2017, Ronald’s Board of Commission did the same; extending the term of the 2002 IOA by two (2) years; and

WHEREAS, included within the First Amendment to the 2002 IOA was the development of a Wastewater Utility Operating Services Agreement under which certain operations and functions of Ronald would be performed by the City; and

WHEREAS, the City now desires to enter into a new Franchise agreement with Ronald consistent and concurrent with the term of the amended 2002 IOA and reflecting the intent of the services agreement that will be executed subsequent to the adoption of this Ordinance; and

WHEREAS, the Council finds that it is in the best interests of health, safety and welfare of residents of the Shoreline community to grant a non-exclusive franchise to the Ronald Wastewater District for the operation of a sanitary sewer system within the City Right-of-way;

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

Section 1. Definitions. The following terms contained herein, unless otherwise indicated, shall be defined as follows:

1.1 City: The City of Shoreline, a municipal corporation of the State of Washington,

specifically including all areas incorporated therein as of the effective date of this ordinance and any other areas later added thereto by annexation or other means.

- 1.2. Days: Calendar days.
- 1.3. Director: The City Manager or designee.
- 1.4. Ronald: Ronald Wastewater District, a municipal corporation organized under Title 57 RCW and governed by its Board of Commissioners.
- 1.5. Facilities: All pipes, access ways, pump stations, storage facilities, equipment, and appurtenances thereto, located in the City's Right-of-way, utilized by Ronald in the operation of its activities. The abandonment by Ronald of any facilities as defined herein shall not act to remove the same from this definition.
- 1.6. Permittee: A person who has been granted a permit by the Permitting Authority, and Ronald operating under Section 4.6 Blanket Permit of this agreement.
- 1.7. Permitting Authority: The City department authorized to process and grant permits (permitting authority) required to work in the City's Right-of-way, or any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.
- 1.8. Person: An entity or natural person.
- 1.9. Right-of-way: As used herein shall refer to the surface of and the space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, utility easement, and/or road right-of-way now or hereafter held or administered by the City of Shoreline.
- 1.10. Ronald Service Area: All the territory located within the corporate boundaries of Ronald Wastewater District, plus those areas lying outside of the corporate boundaries of the District where the District's sanitary sewer system and appurtenances are now or may in the future be located or where the District is providing wastewater utility service to customers.
- 1.11. Wastewater System: Ronald's sanitary sewer collection and conveyance system, which is generally comprised of wastewater pipes, mains, pump stations, grinder pumps, storage facilities, manholes, and appurtenances thereto, not including any wastewater treatment facilities, together with all i) contractual and other rights for wastewater treatment and disposal, and ii) easements, access rights, and other real property interests (not including fee simple).
- 1.12. Wastewater Utility: The Ronald Wastewater District enterprise that owns the Wastewater System and related assets; provides sanitary sewerage services in the

Ronald Service Area, including maintenance and operation of the Wastewater System, customer billing, customer service, vendor contracting, and other functions; and levies and collects rates and charges.

- 1.13 Wastewater Utility Operating Services Agreement: A services agreement entered into between the City and Ronald on _____, 2017, setting for the roles and responsibilities of the City and Ronald regarding the City's performance of services and functions in operating and maintaining Ronald's Facilities and the provision of administrative and financial services and functions and Ronald's budgeting, reimbursement, and payment for the same.

Section 2. Franchise.

- 2.1. Pursuant to RCW 35A.47.040 the City hereby grants to Ronald, its successors and assigns, subject to the terms and conditions hereinafter set forth, a Franchise beginning on the effective date of this Ordinance.
- 2.2. This Franchise shall grant Ronald the right, privilege and authority, subject to the terms and conditions hereinafter set forth; to construct, operate, maintain, replace and use all necessary equipment and facilities related to its a sanitary sewer system, in, under, on, across, over, through, along or below the Right-of-way for the purpose of its sanitary sewer utility facilities as approved under City permits issued by the Permitting Authority pursuant to the Franchise and City ordinances.
- 2.3. This ordinance is to be construed as granting permission to Ronald to go only upon any public right-of-way described herein. Permission to go upon any other property owned or controlled by the City must be sought from the City on a case by case basis.

Section 3. Non-Interference of Facilities.

- 3.1. Ronald's Facilities shall be located, relocated and maintained within the Right-of-way 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 ordinances of the City and laws of the State of Washington. Nothing herein shall preclude Ronald from affecting temporary road closures as reasonably necessary during construction or maintenance of its Facilities provided Ronald receives prior City approval, which shall not be unreasonably withheld. Whenever it is necessary for Ronald, in the exercise of its rights under this Franchise, to make any excavation in the Right-of-way, Ronald shall, upon completion of such excavation, restore the surface of the Right-of-way to a condition that meets the specifications established within the City of Shoreline Engineering Development Guide and pre-approved plans and in accordance with standards of general applicability imposed by the City by ordinance or administrative order.

Section 4. Right-of-Way Management.

4.1. Excavation.

4.1.1. During any period of relocation or maintenance, all surface structures, if any, shall be erected and used in such places and positions within the Right-of-way so as to interfere as little as possible with the safe and unobstructed passage of traffic and the unobstructed use of adjoining property. Ronald shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or state law, including RCW 39.04.180, for the construction of trench safety systems.

4.1.2. Whenever Ronald excavates in any right-of-way for the purpose of installation, construction, repair, maintenance or relocation of its Facilities, it shall apply to the City for a permit to do so in accord with the ordinances and regulations of the City requiring permits to operate in the Right-of-way. In no case shall any such work commence within any Right-of-way without a permit, except as otherwise provided in this Ordinance. During the progress of the work, Ronald shall not unnecessarily obstruct the passage or use of the Right-of-way, and shall provide the City with plans, maps, and information showing the proposed and final location of any facilities in accordance with Section 15 of this Ordinance.

4.2. Abandonment of Ronald's Facilities. Ronald shall not abandon any of its Facilities within the Right-of- way without the prior written consent of the City

4.3. Restoration after Construction.

4.3.1. Ronald shall, after any installation, construction, relocation, maintenance, or repair of Facilities within the Right-of-way, restore the Right-of-way to at least the same condition existing prior to any such installation, construction, relocation, maintenance or repair. All concrete encased monuments, which have been disturbed or displaced by such work, shall be restored pursuant to all federal, state and local standards and specifications. Ronald agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole cost and expense.

4.3.2. If it is determined that Ronald has failed to restore the Right-of-way in accordance with this Section, the City shall provide Ronald with written notice, which shall include a description of actions the City believes necessary to restore the Right-of-way. If the Right-of-way is not restored in accordance with the City's notice within fifteen (15) days of that notice, the City, or its authorized agent, may restore the Right-of-way and Ronald shall be responsible for all reasonable costs and expenses incurred by the City in restoring the Right-of-way in accordance with this Section. The rights granted to the City under this Subsection shall be in addition to those otherwise provided by this Franchise.

- 4.4. Bonding Requirement. Ronald, as a public agency, is not required to comply with the City's standard bonding requirement for working in the City's Right-of-way.
- 4.5. Emergency Work, Permit Waiver. In the event of an emergency where any Facilities located in the Right-of-way are broken or damaged, or if Ronald's construction area for their Facilities is in such a condition as to place the health or safety of any person or property in imminent danger, Ronald shall immediately take necessary emergency measures to repair or remove its Facilities without first applying for and obtaining a permit as required by this Franchise. However, this emergency provision shall not relieve Ronald from later obtaining necessary permits for the emergency work. Ronald shall apply for the required permits the next business day following the emergency work or as soon as practical thereafter given the nature and duration of the emergency.
- 4.6. Blanket Permit. The terms "Minor Activities", "Blanket Activities", and "Major Activities" are defined in the "Blanket Permit for Activity Within The Public Right-of-Way," which is incorporated by reference and shown in Exhibit A to this Ordinance. Permittee shall be authorized to perform Blanket Activities under the terms and conditions of the Blanket Permit. All other activities except those activities determined to be "Minor Activities" or activities performed or managed by the City will require a separate permit in accordance with City ordinances.
- 4.6.1 The Permittee shall pay the City a permit inspection/processing fee in the amount set out in the Blanket Permit.
- 4.6.2 The Permittee shall provide a monthly list of Blanket Permit construction activity by the 10th of the following month listing the previous month's activity authorized under this Section.
- 4.6.3 For each separate use of the Right-of-way under this Section, and prior to commencing any work on the Right-of-way under this Section, the Permittee shall:
- (1) At least twenty- four (24) hours in advance of entering the Right-of-way, email or otherwise deliver to the Permitting Authority a City Inspection Request Form, as provided by the Permitting Authority. Said form shall include, at a minimum, the following information: Franchise ordinance number, street address nearest to the proposed work site; parcel number and description of work to be performed.
 - (2) Within twenty-four (24) hours after completing the work, email or deliver to the Permitting Authority a notice of completion in the form provided by the Permitting Authority.
- 4.6.4 The City reserves the right to alter the terms and conditions of this Subsection and

of the Blanket Permit by providing thirty (30) days written notice to the Permittee. Any change made pursuant to this Subsection shall thereafter apply to all subsequent work performed pursuant to this Subsection.

4.6.5 In the event the Permittee fails to comply with any of the conditions set forth in this Subsection, the City may provide written notice of termination to operate under this Subsection to Permittee, stating with specificity, the basis for the termination of the Permittee's authority.

4.7. Safety.

4.7.1. Ronald, in accordance with applicable federal, state, and local safety rules and regulations shall, at all times, employ ordinary care in the installation, maintenance, and repair of its Facilities utilizing methods and devices commonly accepted in the sanitary sewer industry to prevent failures and accidents that are likely to cause damage, injury, or nuisance to persons or property.

4.7.2. Ronald will make all reasonable effort to construct and maintain its Facilities in the Right-of-way in a safe and operational condition.

4.8. Dangerous Conditions, Authority for City to Abate.

4.8.1. Whenever Facilities or the operations of Ronald cause or contribute to a condition that appears to endanger any person or substantially impair the lateral support of the adjoining Right-of-way, public or private property, the City may direct Ronald, at no charge or expense to the City, to take actions to resolve the condition or remove the endangerment. Such directive may include compliance within a prescribed time period.

4.8.2. In the event Ronald fails or refuses to promptly take the action, or if emergency conditions exist which require immediate action to prevent imminent injury or damage to persons or property, the City may take such action as it believes necessary and Ronald shall reimburse the City for its actual costs incurred.

4.9 Work Performed or Managed by the City. Whenever the City is performing or managing work in the Right-of-Way on Ronald's Facilities on behalf of Ronald under the terms of the Wastewater Utility Operating Services Agreement, the City shall not be required to obtain a permit for such work within the Right-of-way.

Section 5. Relocation of System Facilities.

5.1. Whenever the City causes the grading or widening of the Right-of-way or undertakes construction of any water or storm drainage line, lighting, signalization, sidewalk improvement, pedestrian amenities, or other public street improvement (for purposes other than those described in Section 5.3 below) and

such project requires the relocation of Ronald's then existing Facilities lying within that portion of the Right-of-way, or an area affected by such city projects, the City shall:

- (1) Provide Ronald, at least one hundred twenty (120) days prior to the commencement of such project written notice that a project is expected which will or may require relocation of a portion of Ronald's Facilities; and
- (2) Provide Ronald, at least sixty (60) days, with reasonable plans and specifications for such grading, widening, or construction and a proposed new location within or adjacent to the Right-of-way for Ronald's Facilities.

5.2. After receipt of such notice and the plans and specifications, Ronald shall relocate such Facilities within the Right-of-way as to accommodate such street and utility improvement project ten (10) days prior to commencement of the project unless there is agreement to a different schedule for coordinating completion of relocation of Facilities, provided, however, Ronald may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocations of its Facilities and the time schedule. The City shall within a reasonable time evaluate such alternatives and advise Ronald 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, Ronald 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 Ronald shall relocate its Facilities as otherwise provided in this Section 5. The City shall cooperate with Ronald to designate a substitute location for its Facilities within the Right-of-way. The cost of relocating such Facilities existing within the present limits of the City shall be paid as follows:

- (1) if the relocation occurs within five (5) years after Ronald initially constructed such Facility, then the relocation shall be at the City's sole cost;
- (2) if the relocation occurs more than five (5) years after Ronald initially constructed such Facility, then the relocation shall be at Ronald's sole cost.

5.3. Obligations under this Section 5 shall not apply whenever any person or entity, other than the City, requires the relocation of Ronald Facilities to accommodate the work of such person or entity within the Right-of way, or whenever the relocation of Ronald's Facilities within the Right-of-way is necessary to satisfy any requirement or condition of a City permit or approval issued on a land use action (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) for the benefit of any person or entity other than the City. However, in the event the City reasonably determines (and promptly notifies Ronald 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 subsection 5.1 above) within a segment of the Right-of-way then Ronald shall require only those costs and expenses incurred by Ronald in integrating and connecting such relocated Facilities with Ronald's other Facilities to be paid to Ronald by such person or entity, and Ronald shall otherwise relocate its Facilities within such segment of the Right-of-way in accordance with the provisions of Subsection 5.1 above.

The provisions of this Subsection 5.3 shall in no manner preclude or restrict Ronald 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.

- 5.4 Any cost or expense in connection with the location or relocation of any Facilities existing under benefit of easement or other rights not arising under this Franchise, shall be borne fifty percent (50%) by the City, and fifty percent (50%) by Ronald.

Section 6. Compliance with Codes and Regulations.

- 6.1. 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 Shoreline, 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 Ronald shall be performed by Ronald 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 Ronald.
- 6.2. Upon written inquiry, Ronald 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 Ronald's actions related to a specific franchise issue.
- 6.3. In the event that any territory served by Ronald is annexed to the City after the effective date of this Franchise, such territory shall be governed by the terms and conditions contained herein upon the effective date of such annexation.

Section 7. System Development Information

- 7.1. Ronald will assign a representative whose responsibility shall be to coordinate with the City on planning for Capital Improvement Plan projects including those that involve under grounding. At a minimum, such coordination shall include the following:
- (1) Ronald shall meet with the City, other franchisees and users of the Right-of-way, according to a schedule to be determined by the City, to schedule and coordinate construction.
 - (2) All construction locations, activities, and schedules shall be coordinated, as required by the City Manager or designee, to minimize public inconvenience, disruption, or damages.
 - (3) For the purpose of planning, Ronald 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.

Section 8. Planning Coordination. The parties agree, as follows, to participate in the development of, and reasonable updates, to each other's planning documents.

- 8.1. For Ronald's service within the City limits, Ronald will participate in a cooperative effort with the City of Shoreline to develop a Comprehensive Plan - Utilities Element, that meets the requirements described in RCW 36.70A.070(4).
- 8.2. Ronald will participate in a cooperative effort with the City to ensure that the Utilities Element of the City's Comprehensive plan is accurate as it relates to Ronald's operations and is updated to ensure its continued relevance at reasonable intervals.
- 8.3. Ronald shall submit information related to the general location, proposed location, and approximate capacity of all existing and proposed Facilities within the City as requested by the Director within a reasonable time, not exceeding sixty (60) days from receipt of a written request for such information.
- 8.4. Ronald will update information provided to the City whenever there are major changes in Ronald's system plans for the City.
- 8.5. Ronald will provide information relevant to its operation within the City within a reasonable period of time after a written request to assist the City in its need to develop and update its Comprehensive Plan - Utilities Element, provided that such information is in Ronald's possession or can be reasonably developed from information in Ronald's possession.
- 8.6. The City will provide information relevant to Ronald's operations within a reasonable period of time following a written request to assist Ronald in the development or update of its Comprehensive Sewage System Plan, provided that

such information is in the City's possession, or can be reasonably developed from the information in the City's possession.

Section 9. Indemnification by Ronald and Shoreline.

- 9.1 Ronald hereby releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless the City, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards, attorney's fees, or liability to any person, including claims by Ronald's own employees to which Ronald might otherwise be immune under Title 51 RCW, arising from personal injury or damage to property allegedly due to the negligent or intentional acts or omissions of Ronald, its agents, servants, officers or employees in performing activities authorized by this Franchise. This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of the acts or omissions of Ronald, its agents, servants, officers or employees except for claims for injuries and damages caused by the sole negligence of the City. If final judgment is rendered against the City, its elected officials, employees, agents, and volunteers, or any of them, Ronald shall satisfy the same. The City may appear in any proceeding it deems necessary to protect the City's or the public's interests.
- 9.2 The City hereby releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless Ronald, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards, attorney's fees, or liability to any person, including claims by City's own employees to which City might otherwise be immune under Title 51 RCW, arising from personal injury or damage to property allegedly due to the negligent or intentional acts or omissions of City, its agents, servants, officers or employees in performing construction, maintenance or other city activities within the Rights-of-way. This covenant of indemnification shall include, but not be limited by this reference, claims against Ronald arising as a result of the acts or omissions of City, its agents, servants, officers or employees except for claims for injuries and damages caused by the sole negligence of Ronald. If final judgment is rendered against Ronald, its elected officials, employees, agents, and volunteers, or any of them, City shall satisfy the same. Ronald may appear in any proceeding it deems necessary to protect Ronald's interests or the interests of its ratepayers.
- 9.3. In the event any such claim or demand be presented to or filed with either party, such party shall promptly notify the other thereof, which party shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand. In the event any suit or action be begun against either party based upon any such claim or demand, such party shall likewise promptly notify the other party thereof, which party 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.
- 9.4. Inspection or acceptance by one party of any work performed by the other at the

time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be settled prior to the culmination of any litigation or the institution of any litigation.

- 9.5. In the event either refuses to undertake the defense of any suit or any claim, after a request for defense and indemnification has been made pursuant to the indemnification clauses contained herein, and such refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal, such party shall pay all of the other party's costs and expenses for defense of the action, including reasonable attorney's fees or recovering under this indemnification clause as well as any judgement against the party.
- 9.6. Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in 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 Ronald and the City, its officers, employees and agents, each party's liability hereunder shall be only to the extent of its negligence. This waiver has been mutually negotiated by the parties.

Section 10. Insurance. During the term of this Franchise and as pursuant to the terms of the Wastewater Utility Operating Services Agreement:

- 10.1. The City shall procure and maintain liability coverage related to the operation of the Wastewater Utility and for use of Ronald property and equipment damage..
- 10.2. Ronald shall procure and maintain property coverage for Ronald property and liability relating to the actions of the District Board of Commissioners.
- 10.3. Ronald shall waive subrogation against the City only for damage covered by Ronald's property insurance.
- 10.4. For the purpose of avoiding any uninsured exposure for Ronald, the City expressly waives all immunity and limitation of liability under the Industrial Insurance Act, Title 51 RCW, for any claims for personal or bodily injury brought by a City employee against Ronald. This waiver was the result of mutual negotiations of the City and Ronald.
- 10.5. The City and Ronald will coordinate insurance coverage to make sure that no gaps in coverage exist. Specifically, the City and Ronald will meet and confer in a timely fashion with the Washington State Risk Management Pool and the Washington Cities Insurance Authority to plan and obtain adequate insurance coverage for all necessary and appropriate Wastewater Utility and Wastewater System property, activities, events, and contingencies.

Section 11. Default / Enforcement.

- 11.1. The City reserves the right to revoke and terminate this Franchise and all rights and privileges of Ronald in the event of a substantial violation or material breach of its terms and conditions.
- 11.2. A substantial violation or material breach by Ronald shall include, but shall not be limited to, the following:
- (1) An uncured violation of any material provision of this Franchise, or any material rule, order or regulation of the City which would endanger the public health, safety and welfare;
 - (2) The practice of any fraud or deceit upon the Ratepayers served by the Wastewater Utility.
 - (3) The practice of any fraud or deceit upon the City.
 - (4) Misrepresentation of material facts in the negotiation of this Franchise or its implementation.
 - (5) The negligent failure or unreasonable refusal to provide the sanitary sewer services specified in the Franchise.
 - (6) A continuous and willful pattern of grossly inadequate service.
 - (7) An uncured failure to pay the fee associated with this Franchise.
- 11.3. No violation or breach of this Franchise shall occur which is without fault of either Ronald or the City, unless they are the result of circumstances beyond Ronald's or the City's reasonable control, such as Acts of God or unrelated third parties.

Neither Ronald, nor the City, shall be excused by economic hardship or by nonfeasance or malfeasance of its elected officials, officers, agents or employees.

Damage to equipment causing service interruption shall be deemed to be the result of circumstances beyond Ronald's or the City's control if it is caused by any negligent act or unintended omission of its employees (assuming proper training) or agents (assuming reasonable diligence in their selection), or sabotage, vandalism or malicious mischief by its employees or agents. Ronald, or the City, shall bear the burden of proof in establishing the existence of such conditions.

- 11.4. Except in the case of termination of this Franchise pursuant to Subsection 11.2(4), the City, or Ronald, prior to any termination or revocation of this Franchise, shall provide the other with detailed written notice describing any substantial violation or material breach upon which it proposes to take action. The party who is allegedly in breach shall have a period of 60 days following such written notice to cure the alleged violation or breach, or demonstrate to the other's satisfaction that a violation or breach has not occurred or does not exist, or submit a plan that is satisfactory to the other to correct the violation or breach. If, at the end of said 60-day period, the party giving such notice reasonably believes that a substantial violation or material breach is continuing and that the party in breach is not taking

satisfactory corrective action, the noticing party may, by written notice to the other party, declare that the party in breach is in default. Within 20 days after receipt of a written declaration of default, the party that is alleged to be in default may request, in writing, a hearing before the City Hearing Examiner, as provided by the City's development regulations.

The City Hearing Examiner's decision may be appealed by either party to the King County Superior Court within thirty (30) days following the date of the decision rendered.

- 11.5. The City may, in its discretion and without waiving its rights under Subsection 11.4 above, provide, in writing, for an extension of the period for Ronald to remedy any violation or breach of the Franchise terms or take such corrective action specified in the Notice and come into compliance with its obligations under this Franchise, so as to avoid its termination or revocation.
- 11.6 Any violation continuing for a period greater than 60 days may be remedied by the City at Ronald's expense, unless Ronald is diligently and in good faith proceeding with corrective action and its failure to complete corrective action is caused by unavoidable delays or events beyond its control.

Section 12. Franchise Term.

12.1 The term of the Franchise granted hereunder shall remain in full force and effect and binding upon the parties until 11:59 pm PST on June 22, 2019, unless terminated sooner pursuant to its terms or by written agreement of the parties.

12.2 The City, at its sole option, may no less than three (3) months prior to the end of the term of this Franchise extend this Franchise for an additional two (2) years by providing written notice to Ronald.

Section 13. 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 under, over, upon, and along the Right-of-way which do not interfere with Ronald's existing sanitary sewer system and its rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Right-of-way or affect the jurisdiction of the City over the same or any part thereof.

Section 14. Franchise Fee.

14.1. In consideration for the rights granted Ronald under this Franchise and the parties concomitant Interlocal Operating Agreement to occupy City Right-of-way for the purpose of operating a sanitary sewer utility within the City dated October

23, 2002, as amended by the First Amendment to the Interlocal Operating Agreement dated June 22, 2017, and as may be further amended, and as compensation for the City's recovery of actual administrative expenses incurred by the City that are directly related to receiving and approving permits, licenses, cost of inspections, this Franchise and inspecting plans for construction within the Right-of-way, Ronald agrees to pay the City a franchise fee of \$3,000.00 annually in addition to those fees identified in the Blanket Permit, Subsection 4.6, and the fees identified in Section 5 Interlocal Operating Agreement Fee of the First Amendment to the Interlocal Operating Agreement dated June 22, 2017. Proceeds of the franchise fee collected shall be distributed to the City no later than 30 days after the end of each calendar year.

Section 15. Records. As a condition of this Franchise, and without charge to the City, Ronald agrees to provide the City with available as-built plans, maps, and records that show the vertical and horizontal location of its Facilities within the Right-of-way, measured from the center line of the Right-of-way, using a minimum scale of one inch equals one hundred feet (1"=100'). If available as a standard format maintained by Ronald, maps shall be provided in Geographical Information System (GIS) or other digital electronic format used by the City and, upon request, in hard copy plan form used by Ronald. This information shall be provided between one hundred twenty (120) and one hundred eighty (180) days of the effective date of this Ordinance and shall be updated upon reasonable request by the City.

Section 16. Survival. All of the provisions, conditions and requirements of Subsections 4.1 Excavation, 4.2 Abandonment Of Ronald's Facilities, 4.3 Restoration After Construction, 4.8 Dangerous Conditions, Authority For City To Abate, Section 5 Relocation of System Facilities, and Section 9 Indemnification, of this Franchise, shall be in addition to any and all other obligations and liabilities Ronald may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to Ronald for the use of the areas mentioned in Section 2 herein, and any renewals or extensions thereof. This Ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of Ronald and all privileges, as well as all obligations and liabilities of Ronald shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever Ronald is named herein.

Section 17. Severability. If any Section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other Section, sentence, clause or phrase of this Franchise Ordinance. The Parties may amend, repeal, add, replace, or modify any provision of this Franchise to preserve the intent of the parties as expressed herein prior to any finding of invalidity or unconstitutionality.

Section 18. Assignment. This Franchise shall not be sold, transferred, assigned, or disposed

of in whole or in part either by sale, voluntary or involuntary merger, consolidation or otherwise, without the written approval of the City. This Section shall not act to require City approval of any Ronald action to mortgage or otherwise encumber its facilities, or other action related to corporate financing, financial reorganization, or refinancing activity.

Section 19. Notice. Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

President of the Board of Commissioners	City Manager
Ronald Wastewater District	City of Shoreline
PO Box 33490	17500 Midvale Avenue N
17505 Linden Avenue N	Shoreline WA 98133
Shoreline WA 98133-0490	

Section 20. Non-Waiver. The failure of either party to enforce any breach or violation by the other party of any provision of this Franchise shall not be deemed to be a waiver or a continuing waiver by the non-breaching party of any subsequent breach or violation of the same or any other provision of this Franchise.

Section 21. Alternate Dispute Resolution. If the parties are unable to resolve disputes arising from the terms of this Franchise, prior to resorting to a court of competent jurisdiction, the parties shall submit the dispute to a non-binding alternate dispute resolution process agreed to by the parties. Unless otherwise agreed between the parties or determined herein, the cost of that process shall be shared equally.

Section 22. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution and acceptance hereof.

Section 23. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and/or the Code Reviser are authorized to make necessary corrections to this Ordinance, including the corrections of scrivener or clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering and references.

Section 24. Effective Date and Directions to City Clerk. A summary of this Ordinance, consisting of its title, shall be published in the official newspaper of the City. This Ordinance shall take effect and be in full force five days after publication. The City Clerk is directed to forward a certified copy of this Ordinance Ronald to accept in writing the terms of the Franchise.

Section 25. Ronald Acceptance of Franchise. Ronald shall have no rights under this Franchise as granted by this Ordinance, nor shall Ronald be bound by the terms and conditions of this Franchise unless Ronald shall, within thirty (30) days after the effective date of this Ordinance, file with the City its written acceptance of

this Franchise as granted by this Ordinance, in a form acceptable to the City Attorney.

PASSED BY THE CITY COUNCIL ON OCTOBER 16, 2017.

Christopher Roberts, Mayor

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik Smith
City Clerk

Margaret King
City Attorney

Date of Publication: _____
Effective Date: _____

Exhibit A to Ordinance No. 800

BLANKET PERMIT FOR ACTIVITY WITHIN THE PUBLIC RIGHT-OF-WAY

The City hereby grants a Blanket Permit to Ronald, which shall commence upon the effective date of the Franchise approved under Ordinance No. 800 and remain in effect so long as the Franchise remains in effect, except where terminated earlier as provided herein. This Blanket Permit is subject to the following conditions:

1. This permit only authorizes those activities described in Section 8 of Exhibit A as "Blanket Activities." It does not authorize "Major Activities" as described in Section 9 of Exhibit A, which require a separate Right-of-Way Permit. "Minor Activities" as described in Section 7 of Exhibit A do not require either a Blanket Permit or Right-of-Way Permit.
2.
 - a. Ronald shall pay the City the permit fee identified in the City's Fee Schedule (Shoreline Municipal Code Section 3.01) for Right-of-way utility blanket permits per each use of the City right-of-way. The permit fee is a flat fee based on average administrative costs and inspection fees required to process each use of this Blanket Permit.
 - b. The City shall bill Ronald for the Blanket Permit activities with the regular monthly City Right-of-Way Permit invoicing.
 - c. Ronald shall provide payment of permit fees for the previous monthly activity upon receipt of invoice but no later than thirty (30) days after receiving a bill.
 - d. In the event the above stated inspection fee is changed during the term of this Blanket Permit, the new amount shall thereafter apply to all subsequent inspections made pursuant to this Permit.
3. For each separate use of the Right-of-way under this Blanket Permit, and prior to commencing any work on the Right- of-way under this Blanket Permit, Ronald shall:
 - a. Email or deliver the City Inspection Request Form at least 24 hours in advance which shall include the following information: blanket permit number, street address nearest to the proposed work site; parcel number and description of work to be performed.
 - b. Email or deliver the City's Right-of-Way Inspection Division notice of completion within 24 hours after completing the work.
4. Ronald shall hold the City and its officers, agents and employees harmless from all costs, claims or liabilities of any nature including attorney's fees, costs and expenses for or on account of injuries or damages sustained by any persons or property resulting from the negligent activities or omissions of Ronald, its agents or employees pursuant to this Agreement, or on account of any unpaid wages or other remuneration for services; and if a suit as described above be filed, Ronald shall appear and defend the same at its own cost and expense, and if judgment be rendered or settlement made requiring payment by the City, Ronald shall pay the same.
5. Ronald shall immediately restore and repair to the City's standards all Right-of-way which is in any way damaged or disturbed by Ronald. Ronald shall comply with all applicable laws and regulations ~~701.22~~ performing any work pursuant to this Permit.

6. In the event Ronald fails to comply with any of the conditions set forth in this Blanket Permit, the City is authorized to immediately terminate this Blanket Permit by providing Ronald written notice of such termination. Further, the City may terminate this Blanket Permit at any time without cause by providing thirty (30) days written notice to Ronald. Notwithstanding any termination, Ronald will not be relieved of any liability to the City.
7. “Minor Activities” are normal maintenance activities performed by the City in the Right-of-Way on Ronald’s Facilities on behalf of Ronald under the terms of the Wastewater Utility Operating Services Agreement or other activities which do not disrupt the City road or traffic patterns within the City Right-of-way.

Examples of “Minor Activities” include:

- Utility locate processing
- Routine flushing, rodding, inspections
- Telespection of sewer lines
- Grade adjustments on manhole castings as result of asphalt overlays
- Manhole casting maintenance in gravel shoulder

8. “Blanket Activities” cause some disruption to the Right-of-way and possibly to traffic patterns but not to the degree where significant City involvement is required during the plan review and inspection processes. These activities require a Blanket Permit. All “Blanket Activities” require email or other written notification a minimum of 24 hours in advance, with the exception of emergency repairs. (Email or other written notification within the 24 hours after said emergency).

Examples of “Blanket Activities” include:

- Sewer line repair in pavement less than 55 square feet
- Sewer line repair in gravel shoulder 55 square feet or more
- Road repair related to failure overtop sewer line or within sewer trench less than 55 square feet
- Emergency clearing of sewer line blockages

9. “Major Activities” are major sewer related projects within the Right-of-way which involve removal of road surface, trench excavation, etc., and any disruption of traffic flow within the Right-of-way. These activities shall require a standard Right-of-Way Permit Application and plan submittal for each project. A Blanket Permit does not authorize these activities.

Examples of “Major Activities” include:

- Open cutting of pavement 55 square feet or more
- All mainline extensions
- Installation of all new laterals
- Any activities that disrupt traffic flow in arterials (full lane closure or more)