

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Adoption of Ordinance No. 306 granting a franchise to Ronald Wastewater District to operate a sanitary sewer system within the City and Resolution No. 197 authorizing the City Manager to execute a concomitant Interlocal Operating Agreement coordinating resources of the City and District in providing sewer service

DEPARTMENT: City Manager's Office

PRESENTED BY: Steven C. Burkett, City Manager

PROBLEM/ISSUE STATEMENT:

On June 24, 2002, the City Council approved the terms of a proposed Interlocal Agreement between the Ronald Wastewater District and the City of Shoreline (Attachment A). Since that time District and City staff have drafted the proposed Interlocal Agreement (Attachment B, Exhibit 1) and Franchise Agreement (Attachment C) which reflect those terms.

ALTERNATIVES ANALYZED:

The options available are:

1. Adopt the proposed Franchise Agreement and Interlocal Agreement.
2. Take no action. The current Franchises with Ronald Wastewater would expire December 30, 2002.

FINANCIAL IMPACT:

Approval of the Interlocal Agreement will result in maintaining an estimated \$200,000 per year in revenue from the former Seattle utility customers. Additionally the District will pay an additional \$300,000 in 2002, and a total payment beginning in 2003 of \$550,000. The payment of the interlocal fee then increases annually as provided for in Section 4.2 of the Agreement. The Franchise Agreement provides for a \$3,000 annual fee.

RECOMMENDATION

Staff recommends Council approve Ordinance No. 306 Granting a Franchise to Ronald Wastewater District for a sanitary sewer system and Resolution No. 197 approving an Interlocal Operating Agreement coordinating resources of the District and City in providing sanitary sewer service

Approved By:

City Manager 

City Attorney 

Attachments-

- A. Tentative Agreement of Terms of Agreement
- B. Resolution No. 197 Authorizing an Interlocal Operating Agreement
Exhibit 1- Interlocal Operating Agreement Relating to Sanitary Sewer Service
- C. Ordinance No. 306 Granting a Franchise to Ronald Wastewater District

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 reasonable compensation for the City's grant to RWD the right and privilege to use the City's Rights-of-Way under 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 within the City's boundaries.
- 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 end of the Agreement term 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.
- During the term of the Interlocal Agreement, the City agrees that it shall not 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 franchise fee paid annually by RWD will be \$3,000. In addition RWD shall continue to pay those fees associated Right-of-Way permits, opening permits and fees covered in the blanket permit agreement. *with*
- *LeB* The ILOA will outline a process to identify and implement improved coordination, ~~and maximum~~ quality of service and value to RWD's ratepayers and taxpayers of Shoreline. *firm*
- 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, RWD will proceed with applications for annexation of all areas not currently within RWD'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 RWD in the annexation process.
- The parties agree that RWD shall within a reasonable time attempt to create a standard set of billing rate structures by class of customer throughout the City.

Dated: June 18, 2002

Steven C. Burkett
Steven C. Burkett
Shoreline City Manager

Dated: June 17, 2002

Philip Montgomery
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 through 2016, 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

RESOLUTION NO. 197

**A RESOLUTION OF THE CITY OF SHORELINE, WASHINGTON
AUTHORIZING AN INTERLOCAL OPERATING AGREEMENT
RELATING TO PROVISION OF SANITARY SEWER SERVICES**

WHEREAS, City and Ronald Wastewater District are authorized under chapter 39.34 RCW, the Interlocal Cooperation Act, and RCW 35.13A.070 to contract for the coordinated exercise of powers and sharing of resources for the efficient delivery of services to their residents; and

WHEREAS, the City and District have negotiated a Franchise and concomitant Interlocal Operating Agreement to coordinate the provision of sanitary sewer services in the City of Shoreline; now therefore

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHORELINE,
WASHINGTON THAT**

1. The City Manager is authorized to execute the INTERLOCAL OPERATING AGREEMENT BETWEEN THE CITY OF SHORELINE AND RONALD WASTEWATER DISTRICT RELATING TO SANITARY SEWER SERVICES WITHIN SHORELINE'S CITY LIMITS attached hereto as Exhibit 1.

ADOPTED BY THE CITY COUNCIL ON OCTOBER 14, 2002.

Mayor Scott Jepsen

ATTEST:

Sharon Mattioli, CMC
City Clerk

Exhibit 1

INTERLOCAL OPERATING AGREEMENT BETWEEN THE CITY OF SHORELINE AND RONALD WASTEWATER DISTRICT RELATING TO SANITARY SEWER SERVICES WITHIN SHORELINE'S CITY LIMITS

THIS AGREEMENT is made and entered into this ____ day of _____, 2002, by and between the city of Shoreline, a Washington Non-Charter Optional Municipal Code City (the "City") and Ronald Wastewater District, a Special Purpose Municipal Corporation (the "District").

WHEREAS, the City is the local government with authority and jurisdiction with respect to the territory within its corporate boundaries; and

WHEREAS, the District provides sanitary sewer service to properties located in the District and properties lying in the City's corporate boundaries and also to properties not located in the District or the City; and

WHEREAS, the City does not own or operate a sanitary sewer system; and

WHEREAS, the District and the City agree that the District has provided its service area, including the area now located within the City of Shoreline, with sanitary sewer service for over 42 years and that the District has the skills, assets, willingness and ability to provide the entire City with sanitary sewer service; and

WHEREAS, the City desires to assure its residents of continued unified sanitary sewer service which will comply with federal, state and local law, which will protect the public's health, safety, and welfare, and will provide uniform standards of service; and

WHEREAS, the City and the District have separately negotiated a 15 year Franchise Agreement to establish the terms and conditions under which the District is granted the authority to maintain its sanitary sewer system within the City's Rights of Way to be simultaneously executed and

WHEREAS, the City and District are authorized under chapter 39.34 RCW, the Interlocal Cooperation Act, and RCW 35.13A.070 to contract for the coordinated exercise of powers and sharing of resources for the efficient delivery of services to their residents, and the governing bodies of both parties have passed resolutions approving the execution of this Agreement;

NOW THEREFORE, in consideration of the terms and provisions contained herein, and the Franchise Agreement executed contemporaneously by the parties, the City and the District agree as follows:

Section 1. Purpose. It is the purpose of this Agreement to guide the activities, resources and efforts of the City and the District to provide the citizens of the entire City and the ratepayers served by the District with an efficient, high quality and well maintained sanitary sewerage wastewater system at a reasonable cost and to provide an orderly and predictable transition of the wastewater utility from District to City ownership.

Section 2. Term of Agreement. The term of this Interlocal Operating Agreement shall be fifteen (15) years from the date of its execution.

Section 3. City Responsibilities:

3.1 Franchise Grant to the District. The City shall grant a non-exclusive franchise to the District in the form attached hereto as Exhibit "A" for a concurrent term of 15 years and terminating on the termination date of this Agreement.

3.2 Assumption by the City. The City agrees that in consideration of the "Interlocal Operating Agreement Fee" to be paid by the District to the City as set forth herein in section 4 of this Agreement, and the other terms and conditions of this Agreement, it shall not, during the 15 year term of this Agreement and the concurrent Franchise Agreement granted to the District, attempt to exercise its statutory authority (RCW chapter 35.13A, as currently in effect or amended in the future) to assume jurisdiction over the District or any District responsibilities, property, facilities or equipment within the City's corporate limits, including future annexed areas.

3.3 Fees and Charges. The City shall not, during the term of this Agreement impose any new fees on the District for City costs and services addressed and compensated for in the Franchise Agreement or this Interlocal Operating Agreement, as herein below described.

3.4 Future Statute Authorizing a City Utility Tax on the District. In the event that the State of Washington Legislature should in the future authorize a City to impose a Utility Tax upon a District based upon the District's revenues, or upon any other basis, the payments hereinbelow provided as the District's contractual consideration for this Agreement shall be credited against such Utility Tax as the City may impose and the District shall be obligated to pay only the statutorily supported tax

liability in excess thereof; provided however, this section shall not allow a credit against consideration of this Agreement for generally applicable regulatory fees or revenue-generating charges or taxes that may be authorized by law as applicable to the District and adopted by the City during the term of this Agreement other than a utility tax. For purposes of this section "utility tax" refers a city tax on business activities subject to the tax imposed by chapter 82.16 RCW.

3.4.1 Pass Through of Excess Utility Tax. In the event a Utility Tax on the District by the City is in the future authorized by law, the District shall pay such additional monies and may pass such additional tax liability on to the District's ratepayers as a separate billing item.

3.5 Requirement to Connect to Sanitary Sewer. The City shall, within the first year of this Agreement, study the adoption of rules and regulations related to the requirement that residences and other buildings or improvements located within the City not receiving sanitary sewer service (those using septic tanks or other on site systems), shall, under certain terms and conditions, be required to connect the sewer facilities located in or on such properties to the District's Sanitary Sewer System.

3.5.1. The City shall enforce such rules and regulations if adopted.

3.5.2 The District shall cooperate with the City in such enforcement action.

3.6 City's Option to Extend this Agreement The City, at its sole option, may no less than twelve (12) calendar months prior to the end of the term of this Agreement inform the District, in writing, of its desire to extend this Agreement for an additional five (5) years under terms and conditions as may be mutually agreed to by the Parties.

3.6.1 Should the City give such notice to the District and the District be interested in such a proposal, the Parties shall enter into Good Faith Negotiations to complete and execute a mutually acceptable extension Agreement, within six (6) months from the City's Notice.

3.7 Protection of District Employees upon Assumption by the City. The Parties agree that a fair and equitable transition of the employees of the District at the time of assumption by the City is critical to maintain the efficient operations of the wastewater services. The employees at the District represent a valuable asset to the City as they assume operations

of the District. Therefore, in addition to compliance with RCW 35.13A.090, the City agrees to the following protections for employees of the District at the time of the transfer of the utility system:

3.7.1 All full-time regular non-probationary employees of the District at the time of assumption shall be offered the same or equivalent positions in the City's job classification system, which are consistent with the knowledge, skills, abilities, experience, and technical requirements of the District's employees.

3.7.2 The City agrees not to reduce the salary of a District transferred employee. However, the City reserves the right to freeze a District transferred employee's rate of compensation within a job classification until the City's rate of compensation is equal to or exceeds the transferred employee's rate of compensation.

3.7.3 City agrees it shall not lay off a transferred District employee for at least one year following the date of the transfer to City employment, however, the City reserves the right to terminate District transferred employee for cause.

3.7.4 Service credit for City purposes will be calculated based upon the initial full-time employment date of the transferred employee with Ronald Wastewater District.

3.7.5 Transferred employees will continue participation with the appropriate public employees' retirement system as provided for in RCW 35.13A.090 (1).

3.7.6 The City currently allows employees retiring under the PERS Retirement System to purchase health insurance. The transferred employees will be able to participate in that benefit so long as this is still a benefit offered to City employees at the time of assumption of the District.

3.7.7 The City agrees to abide by the Washington Wastewater Collection Personnel Association certification requirements or equivalent for all sewer maintenance workers.

3.7.8 District agrees that an employment agreement for any employee shall not be extended beyond the City assumption date without review and approval of the City Manager.

3.7.9 The Parties recognize that all agreements with bargaining units will terminate upon transfer to the City.

3.7.10 District agrees that at the time of transfer it shall pay off any accrued sick leave owed to transferred District employees, based on District sick leave policy then in effect.

3.7.11 The Parties agree that District employees transferred to the city shall not carry over more vacation accrual than allowed by City vacation leave policy then in effect, and the District shall pay off vacation in excess of the City's accrual limit upon transfer.

3.8 Obligations On Assumption:

3.8.1 City shall assume all liabilities and contractual obligations of the District or pay those obligations in full where required by contract, bond covenant or other agreements. The District will negotiate all new contracts and loan agreements during the term of this agreement including any mutually agreed upon extension so that the obligations of the District may be assumed by the City upon assumption of the District without cost or penalty. It is agreed that the district's Parity Revenue Bond covenants, as now written, can not, and will not change during this Agreement, therefore, any such Parity Revenue bond obligations of the District will require full defeasance or transfer of the obligation of the District according to the bond covenants at the time of the transfer of assets.

3.8.2 All District assets, personal, real and intangible property will be transferred to the City.

Section 4. The District Responsibilities. In consideration of the City's commitments above and the concomitant Franchise Agreement, the District shall:

4.1 Interlocal Operating Agreement Fee. In consideration of and compensation for the City's forbearance of its rights to assume the District under RCW 35.13A, as it now exists or may be amended, and the rights granted the District under this Agreement to operate its

existing and future sewer facilities within the City's corporate limits, including any future annexed areas, the District agrees to pay the City an "Interlocal Operating Fee" pursuant to the payment schedule set forth herein.

4.2 Schedule of Payments. The schedule of payments shall be as follows:

Year	Amount
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 by Ronald Wastewater District prior to December 31, 2002, less any previously paid fees paid during the year 2002 under the Seattle Public Utilities Franchise Agreement assumed by the District.

In all years subsequent to 2002 through 2016, the Interlocal Agreement Fee will be paid by the District to the City with quarterly payments being made on or before March 15, June 15, September 15, and December 15 of each year.

In the final year, 2017, the District's payment to the City will be pro-rated to the date of the Contract Termination.

The fee paid by the District under this section is a business expense that will not be separately identified on customer billings.

4.3 Storm Water and Water Supply System. The District shall not provide a storm water system or a water supply system within the City without the approval of the City being first obtained.

4.4 Standard Sewer Billing Rate Structure. It shall be the goal of the District to perform a Comprehensive Sewer Rate and Cost of Service Analysis in order to develop a uniform rate schedule following the District's acquisition of the Seattle Public Utilities/Lake City Sewer District Sanitary Sewer System which study shall include but not be limited to the following:

4.4.1 The impact of the overall rate revenue requirements, which analysis shall reflect the impact of diverting the costs and revenue of sewer system customers within the City of Lake Forest Park, if and when service to those customers is taken over by the City of Lake Forest Park.

4.4.2 An evaluation of reasonable options and impacts of phasing in a blending of sewer rates, revising the sewer rates and costs of maintenance and operation, both pre and post Seattle Public Utilities/Lake City Sewer District acquisition of customer segments.

4.4.3 Develop a strategy to expedite a blending of sewer rates to a single set of rate structures that will have the least negative impact on all District ratepayers, now and in the future.

4.4.4 Attempt to create a level billing rate structure for each class of customer throughout the District and the City unless the level of service provided any segment of those properties served requires a "special benefit" surcharge.

4.5 Agreement to Annex. The District shall exercise its legislative authority to seek annexation of those areas which it serves which are not yet within its corporate boundaries and those areas which are within the City's corporate boundaries except areas served by the Highland Sewer District. The District shall proceed with the annexation process as soon as the City of Lake Forest Park exercises its right to annex those areas within its corporate boundaries, and which are presently served by the District's Sanitary Sewer System.

4.5.1 City's Cooperation With Annexation. The City shall promote, cooperate with, and use its best efforts to assist the District in the annexation process articulated in Section _____ of this agreement.

4.6 Seattle Public Utilities Service System Reliability. The District shall prepare plans to upgrade the systems acquired from Seattle Public Utilities to conform to the District's overall operational and maintenance standards.

4.7 Advisory Board. Members of the Board of Commissioners of the District in office at the time of this Agreement who wish to do so, may at their option, sit as an advisory Board to the Shoreline City Council for a three (3) year period beyond the term of this Agreement.

4.8 Cooperation with Assumption and Dissolution. The District agrees to take no action to protest or challenge the assumption of the District following the term of this agreement or any extension thereof. By its execution of this Agreement below the District grants to the City a limited power of attorney to execute a joint petition to Superior Court for dissolution of the District pursuant to RCW 35.13A.080 when authorized by the City Council following the term of this Agreement provided the City is not in breach of this Agreement including terms that survive the term of the Agreement

Section 5. Mutual Responsibilities. In satisfaction of the intent of the parties, the City and District shall have the following responsibilities:

5.1 Common Goals and Interests. The parties shall agree to identify potentially desirable common activities and projects of mutual interest and benefit, which shall include, but not be limited to the following:

5.1.1 Common Vehicle and equipment storage facilities

5.1.2 Common vehicle and equipment maintenance

5.1.3 Emergency/after hours call center

5.1.4 Combined permitting/licensing offices

5.1.5 Joint but separate communications - emergency radio/telephone

5.1.6 Creation of a joint committee to discuss, evaluate and select cost-effective common programs relating to:

i. Energy management

ii. Equipment sharing

iii. Information technology

iv. Staff training, where possible

v. Joint insurance programs

5.2 Inter-Agency Communications. A committee consisting of the City's City Manager and Public Work's Director, and the District's General Manager and Maintenance Manager will meet annually to evaluate projects which may be agreed upon to have a mutual benefit, and which may be jointly undertaken.

5.3 Capital Improvement Plan: Each of the Parties shall provide the other with a copy of their respective present Capital Improvement Plan to better facilitate the use of the streets, sidewalks and rights of way and the areas under them.

5.4 Coordination of City and District's Comprehensive Plans. The City's Manager and District's General Manager shall meet annually to coordinate activities related to their respective Comprehensive Plans and their respective Capital Improvement Plans. The parties shall address revisions to their respective Comprehensive Plans at the earliest opportunity to reflect the transition of wastewater service delivery by the City at the end of this Agreement.

5.5 Information and Document Exchange. The Parties shall exchange information and documents relating to the location of the facilities which they each operate within the affected rights of way.

5.6 Assumption Transition. No later than 24 months prior to the end of the term of this Agreement, the City and District shall negotiate in good faith the terms of final transition. Transition terms shall include plans that the City and the District agree to implement to ensure a smooth transition from District to City operations. These plans would include operational issues, financial issues, and employee transition issues. Transition terms shall include but not be limited to the following:

5.6.1 Defeasance or call of all bonded debt principal outstanding and interest owed if required by bond covenants.

5.6.2 Assumption of all indebtedness and other liabilities subject to the terms and conditions of related agreements and contracts.

5.6.3 Terms for application and future use of any cash reserves at the time of the transfer of the system then restricted as to use for system rehabilitation and replacement per District Resolution

5.6.4 District agrees to maintain its reserve funds in the same manner as current policy, and shall maintain adequate reserve levels subject to periodic review by the District's Board of Commissioners in establishing policies related to the financial needs of the District.

Section 6. Termination. In addition to all other rights and powers to remedy default including specific performance, both Parties reserve the right to revoke and terminate this Agreement in the event of a substantial violation or breach of its terms and conditions.

Section 7. Indemnification. The parties shall indemnify and hold harmless each other and their respective officers, agents, and employees from all costs, claims or liabilities of any nature, including attorneys' fees, costs and expenses for or on account of injuries or damage by any persons or property resulting from the negligent activities or omissions of that Party or their respective agents or employees arising from the performance of this agreement.

Section 8. Definitions. The terms used in this Agreement, if not defined herein, shall have their meanings as defined in any other documents executed contemporaneously or in conjunction with this Agreement.

Section 9. Remedies. In addition to the remedies provided by law, this Agreement shall be specifically enforceable by any Party.

Section 10. Venues. In the event of litigation pertaining to this Agreement, the exclusive venues and places of jurisdiction shall be in King County, Washington.

Section 11. Alternative Dispute Resolution-Arbitration. Except as otherwise provided under applicable state law, any dispute, controversy or claim arising out of or in connection with, or relating to, this Agreement or any breach or alleged breach of this Agreement, shall be submitted to, and settled by, arbitration to be held in King County, Washington in accordance with the provisions of Chapter 7.04 of the Revised Code of Washington, as amended, and with respect to matters not covered in such statute, by the rules of the American Arbitration Association; provided, however, that in the event of any conflict between such statute and such rules, the provisions of the statute shall control; and provided further, that notwithstanding anything in such statute or rules to the contrary: (a) the arbitrator's decision and award shall be made according to the terms and provisions of this Agreement and the applicable law, and such award shall set forth findings of fact and conclusions of law of the arbitrator upon which the award is based in the same manner as is required in a trial before a judge of the Superior Court of the State of Washington; (b) the arbitrator shall award attorney's fees to the prevailing party; and (c) in any such arbitration, there shall be a single arbitrator and any decision made shall be final, binding and conclusive on the parties. The fees of the arbitrator shall be borne equally by the parties except that, in the discretion of the arbitrator, any award may include a party's share of such fee if the arbitrator determines that the dispute, controversy or claim was submitted to arbitration as a dilatory tactic.

Section 12. Binding. This Agreement shall inure to the benefit of and be binding upon the Parties, their successors and assigns.

Section 13. Enforceability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

Section 14. Applicable Law: This Agreement shall be construed under the laws of the State of Washington.

Section 15. Attorneys Fees. If either party employs an attorney to enforce any rights arising out of or relating to this Agreement, the prevailing party shall in such dispute be entitled to recover its reasonable attorneys' fees.

Section 16. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter. It shall not be

modified except by a written agreement signed by both parties. None of the provisions of this Agreement shall be deemed to have been waived by any act of acquiescence on the part of either Party, its agents, or employees, but only by an instrument in writing signed by an authorized officer of the Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provisions on another occasion.

Section 17. Survival. All of the provisions, conditions and requirements of Sections 3.7, 3.8, 4.7, 4.8, 7, 8, 9, 10, 11, 12, 13,14, 15, and 16 shall survive the fifteen (15) year term of this Agreement.

Section 18. Effective Date and Term of Contract. This agreement shall be in full force and effect and binding upon the parties hereto upon the execution of the Agreement and shall continue in full force and effect fifteen (15) years from the effective date.

CITY OF SHORELINE:

Steven C. Burkett, City Manager

Approved as to form:

Ian R. Sievers, City Attorney

RONALD WASTEWATER DISTRICT:

President, Board of Commissioners

Attest:

Secretary, Board of Commissioners

ORDINANCE NO. 306

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, RCW 35A.11.020 grants the City board authority to regulate the use of the public right of way; and

WHEREAS, RCW 35A.47.040 authorizes the City "to grant nonexclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for ... facilities for public conveyances, for poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for transmission and distribution of electrical energy, signals and other methods of communication, for gas, steam and liquid fuels, for water, sewer and other private and publicly owned and operated facilities for public service," 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. District: Ronald Wastewater District (Ronald), a municipal corporation and its

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respective successors and assigns.

- 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 the District in the operation of activities authorized by this Ordinance. The abandonment by District 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 District 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 Wastewater District Sewer Service Area: All the land located within the corporate boundaries of Ronald Wastewater District as they now or may in the future exist, plus those areas lying outside of the corporate boundaries of the District in which the District's sanitary sewer system and appurtenances are now or may in the future be located, including but not limited to the sewer facilities acquired by Ronald Wastewater District from Seattle Public Utilities.

Section 2. Franchise

- 2.1. Pursuant to RCW 35A.47.040 the City hereby grants to Ronald, it's 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 it's 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 Paragraph 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" and "Blanket Activities" is defined in a specifically negotiated "Blanket Permit for Activity Within The Public Right-of-Way," a copy of which has been filed with the City Clerk and identified by Clerk's Receiving Number 1946. Permittee shall be authorized to perform Minor Activities without a City permit of any kind and Blanket Activities under the terms and conditions of the Blanket Permit. All other activities 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 Blanket Permit Definitions.
- 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, fax 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, fax 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 Subsection 4.6 and of Blanket Permit by providing thirty (30) days written notice to the Permittee. Any change made pursuant to this Paragraph shall thereafter apply to all subsequent work performed pursuant to this Section.
- 4.6.6 In the event the Permittee fails to comply with any of the conditions set forth in this Section, the City may provide written notice of termination to operate under this Section 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.

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 Section 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 CIP 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; and
- (2) All construction locations, activities, and schedules shall be coordinated, as required by the City Manager or his 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 it's 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 it's need to develop and update it's 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 District 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 District's own employees to which District 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 District, 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 District, 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, District 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 the District, 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 the District 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 the District. If final judgment is rendered against the District, its elected officials, employees, agents, and volunteers, or any of them, City shall satisfy the same. The District may appear in any proceeding it deems necessary to protect the District'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.

- 10.1. Ronald shall procure and maintain in full force for the duration of the Franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to Ronald, its agents or employees.
- 10.2. In satisfying the insurance requirement set forth in this section, Ronald may self-insure against such risks in such amounts as are consistent with good utility practice. Ronald 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 Ronald. Such written evidence shall include, to the extent available from Ronald's insurance carrier, a written certificate of insurance with respect to any insurance maintained by Ronald in compliance with this Section.
- 10.3. Commercial General Liability insurance policy, written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include premises, operations, independent contractors, products-

completed operations, personal injury and advertising injury. There shall be no endorsement or modification of the Commercial General Liability insurance excluding liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under Ronald's Commercial General Liability insurance policy.

- 10.4. Excess Liability in an amount of \$5,000,000 each occurrence and \$5,000.00 aggregate limit. The City shall be named as an additional insured on the Excess Liability insurance policy.
- 10.5. Automobile Liability insurance for owned, non-owned and hired vehicles with limits no less than \$2,000,000 Combined Single Limit per accident for bodily injury and property damage
- 10.6. Payment of deductible or self-insured retention shall be the sole responsibility of Ronald.
- 10.7. Ronald shall require all its subcontractors to carry insurance consistent with this Section 10.3, and shall provide evidence of such insurance to the City upon request.
- 10.8. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, or employees. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. District's insurance shall be primary. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of District's insurance and shall not contribute with it. Coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City.

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 District's system of sanitary sewers.
 - (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 Paragraph 11.2d, 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 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 Paragraph 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. The term of the Franchise granted hereunder shall remain in full force for fifteen (15) years from the effective date.

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 agreement 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 _____ 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 annually in addition to those fees identified in the Blanket Permit, Section 4.6. 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, District 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 the District, 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 District. 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 Sections 4.1 Excavation, 4.2 Abandonment Of District'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 paragraph 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:

Ronald General Manager
Ronald Wastewater District
PO Box 33490
Shoreline WA 98133-0490
Phone: 206-546-2494
Fax: 206-546-8110

City Manager
City of Shoreline
17544 Midvale Ave No
Shoreline WA 98133-4921
Phone: 206-546-1700
Fax: 206-546-2200

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. Directions to City Clerk. The City Clerk is hereby authorized and directed to forward certified copies of this ordinance to Ronald as set forth in this ordinance. Ronald shall have sixty (60) days from receipt of the certified copy of this ordinance to accept in writing the terms of the Franchise granted to Ronald by this ordinance.

Section 24. Ronald Acceptance of Franchise. Ronald shall have no rights under this Franchise 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 the ordinance, file with the City its written acceptance of this Franchise, in a form acceptable to the City Attorney.

Section 25. Publication Costs. In accord with state law, this ordinance shall be published in full. Ronald shall reimburse the City for the cost of publishing this Franchise Ordinance within sixty (60) days of receipt of an invoice from the City.

Section 26. Effective Date. This ordinance shall take effect and be in full force five days after publication.

PASSED BY THE CITY COUNCIL ON OCTOBER 14, 2002.

Mayor Scott Jepsen

ATTEST:

APPROVED AS TO FORM:

Sharon Mattioli
City Clerk

Ian Sievers
City Attorney

Date of Publication: October 17, 2002
Effective Date: October 22, 2002

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