

# ORIGINAL

## RESOLUTION NO. 197

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

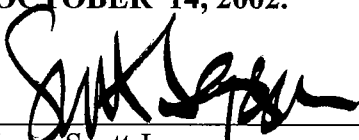
WHEREAS, City and Ronald Wastewater District are authorized under chapter 39.34 RCW, the Interlocal Cooperation Act, and RCW 35.13A.070 to contract for the coordinated exercise of powers and sharing of resources for the efficient delivery of services to their residents; and

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

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## 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 it's 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;

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**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

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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 RCW35.13A.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.

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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.

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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.

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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.

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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:

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Steven C. Burkett, City Manager

Approved as to form:

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Ian R. Sievers, City Attorney

RONALD WASTEWATER DISTRICT:

\_\_\_\_\_

President, Board of Commissioners

Attest:

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Secretary, Board of Commissioners