

RESOLUTION NO. 1706

A RESOLUTION AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT FOR THE PURPOSE OF CONDUCTING A REVIEW OF PORTLAND GENERAL ELECTRIC FRANCHISE DATA

WHEREAS, Ordinance 347 provides Portland General Electric (PGE) with a franchise to provide power and electricity within the city; and,

WHEREAS, the City has not previously audited the gross revenues of PGE and the resulting franchise fee payment; and,

WHEREAS, State mandated deregulation of electricity is scheduled to take effect in October 2001, and requires that local government franchise fees be calculated on volume of sales with 1999 as the base year instead of being calculated based on gross revenue; therefore, it is imperative the kilowatt hours sold by customer class in 1999 be accurately determined; and,

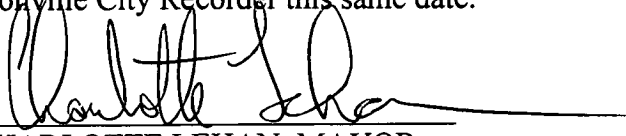
WHEREAS, many cities with the PGE service area have joined together to benefit from a combined review of PGE records; and,

WHEREAS, the City of Wilsonville desires to participate in the intergovernmental approach to reviewing PGE data.

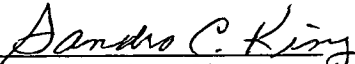
NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The Mayor is authorized to sign an intergovernmental agreement for the purpose of conducting a review of PGE's data for franchise fee purposes. A copy of the intergovernmental agreement is marked Exhibit A, attached hereto, and incorporated by reference as if fully set forth herein.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 16th day of April, 2001, and filed with the Wilsonville City Recorder this same date.


CHARLOTTE LEHAN, MAYOR

ATTEST:


Sandra C. King, City Recorder, CMC

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor Helser	Yes
Councilor Barton	Yes
Councilor Kirk	Excused
Councilor Holt	Yes

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INTERGOVERNMENTAL AGREEMENT**

This Intergovernmental Agreement ("Agreement") is entered into on _____, 2001 ("Effective Date") between all of the municipalities listed in Exhibit A. Each of the municipalities listed in Exhibit A may be referred to individually herein as a "Party" and collectively as the "Parties".

Recitals

- A. The Parties desire to hire one or more consultants ("Consultant") to review and analyze revenues received from PGE for the rights and privileges to operate in the public right-of-way.
- B. There are savings available to the Parties by aggregating the review and analysis, retaining a Consultant to assist them in such review and jointly provide funds to pay such Consultant..
- C. This Agreement is made under the provisions of Oregon Revised Statutes (ORS) 190.003 to 190.030. ORS 190.010 authorizes municipalities to enter into intergovernmental agreements for the performance of any or all functions and activities that a Party to this agreement has the authority to perform.

Agreement

The Parties agree to the following:

- 1. The Parties desire to retain a Consultant to work with the Parties in reviewing and analyzing franchise fees paid by Portland General Electric ("PGE") to the Parties, including but not limited to an evaluation of gross revenue calculations, and developing procedures to be used by member Parties in comparing customer database lists received from PGE with internal databases ("Consultant Services"). In performing the services, the Consultant shall utilize franchise fees paid to the Parties by PGE, pursuant to the Parties' respective electricity franchises or licenses, for calendar year 1999. In addition, the Consultant shall obtain PGE's customer lists for calendar year 2000 to assist the Parties in the database comparison portion of the Consultant Services.
- 2. The Consultant shall be retained through a formal Request for Proposal ("RFP") process. The Parties hereby delegate authority to the City of Hillsboro to prepare the RFP, make an award and enter into a personal services contract with the Consultant on behalf of all of the Parties. The Parties acknowledge and agree that the City of Hillsboro's standard personal

services contract, attached hereto as Exhibit D, may be used for the procurement of the Consultant Services.

3. Each Party shall share in the cost of paying the Consultant to perform the work as outlined in the RFP.
4. The amount in Exhibit B labeled *Estimated Budget* for the Consultant Services may only be modified through separate written agreement signed by all Parties to this Agreement.
5. The percentage in Exhibit B labeled as *Percentage of Contract Considered as Fixed* may only be modified through separate written agreement signed by all Parties to this Agreement.
6. Each Party shall be responsible for paying an equal share of the Fixed Costs relating to the Consultant Services, as shown in Exhibit B. The Fixed Cost allocation is non-refundable in the event a Party should withdraw from this Agreement.
7. The Variable Costs, as shown in Exhibit C and defined as the Total Cost of the Consultant Services less the Fixed Costs, shall be apportioned on a pro-rata basis to each Party to this Agreement. The pro-rata basis shall be determined by comparing the gross PGE franchise or license revenues for each Party to the total gross PGE franchise or license revenues received by all Parties to this Agreement. Gross revenues shall be the 1999 gross revenues as defined by PGE in the letter accompanying the 1999 franchise fees received by each Party in calendar year 1999.
8. Each Party shall remit its share of the Fixed Cost within thirty (30) days after executing this Agreement. Upon finalization of the budget for the Consultant Services, each Party shall remit any remaining unpaid share of the total Fixed Cost estimate. The City of Hillsboro shall prepare and submit invoices to each Party immediately after the Agreement is executed and the budget estimate is finalized.
9. The City of Hillsboro shall prepare and submit Variable Cost invoices to each Party as soon as reasonably possible. The City of Hillsboro will include with each invoice all back-up information reasonably related to the invoice. Each Party shall pay its pro-rata share of the Variable Costs within thirty (30) days of the date of the invoice.
10. The Parties acknowledge and agree that in the event a Party withdraws from this Agreement, *Exhibit C – Allocation of Variable Cost* shall automatically be updated and revised to reapportion the Variable Cost among the remaining Parties.

11. The Parties further delegate to the City of Tigard ("Lead Agency") and the City of Hillsboro ("Managing Agency") the authority to make administrative decisions on behalf of the Parties. The Lead Agency and the Managing Agency shall make reasonable efforts to keep the Parties informed of any decisions made on behalf of the Parties.
12. Any Party may terminate their participation in this Agreement so long as the terminating Party meet all of the following requirements (a) the terminating Party must provide seven (7) days prior written notice to both the Managing Agency and the Lead Agency; (b) such notice must be received by both the Managing Agency and the Lead Agency prior to the inception of any Variable Costs; and (c) the terminating Party must submit full payment to the Managing Agency of any Fixed Costs owed to date by the terminating Party.
13. This Agreement shall terminate upon the earlier of full payment by all of the Parties of all sums due under this Agreement, or two (2) years from the Effective Date. This Agreement may be terminated earlier upon mutual consent of the Parties.
15. The parties shall comply with all applicable laws and regulations regarding the handling and expenditure of public funds. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon.
16. Time is of the essence in the performance of this Agreement.
17. This Agreement is for the benefit of the Parties only. Each Party agrees to indemnify and hold harmless each other Party and its officers, officials, employees, agents and volunteers, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or rising out of services performed, the omission of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying Party and its officers, officials, employees, agents and volunteers. In addition, each Party shall be solely responsible for any contract claims, delay damages or similar items arising from or caused by the action or inaction of that Party under this Agreement.
18. No waiver, consent, modification or change of terms of this Agreement shall be binding unless in writing and signed by all Parties.
19. Any Party may institute legal action to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The Parties, by signature below of their authorized representatives, consent to the *in personam* jurisdiction of that court.

20. Performance by any Party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the Parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control of the Party to be excused.
21. If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement will not be affected or impaired in any way.
22. This Agreement is the entire agreement of the Parties on its subject and supersedes any prior discussions or agreements regarding the same subject.
23. This Agreement may be executed in any number of counterparts by any one or more of the Parties hereto, and all of these counterparts will be one Agreement. To facilitate execution of this Agreement, the Parties may execute by facsimile transmission the counterparts of the signature pages.

Signature Page for Intergovernmental Agreement for Consultant Services:
Review and Analysis of Portland General Electric Franchise and License Fees

Name: _____

By: _____

Date: _____

Name: _____

By: _____

Date: _____

Name: _____

By: _____

Date: _____

Name: _____

By: _____

Date: _____

Name: _____

By: _____

Date: _____

Name: _____

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Signature Page for Intergovernmental Agreement for Consultant Services:
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Name: _____

By: _____

Date: _____

Name _____

By: _____

Date: _____

Name _____

By: _____

Date: _____

Name _____

By: _____

Date: _____

EXHIBIT B

ALLOCATION OF FIXED COSTS

	PARTY	%	ESTIMATED COST
1	Beaverton	4.55%	\$ 1,818.18
2	Cornelius	4.55%	1,818.18
3	Durham	4.55%	1,818.18
4	Estacada	4.55%	1,818.18
5	Gresham	4.55%	1,818.18
6	Fairview	4.55%	1,818.18
7	Hillsboro	4.55%	1,818.18
8	Hubbard	4.55%	1,818.18
9	Lake Oswego	4.55%	1,818.18
10	Milwaukie	4.55%	1,818.18
11	Newberg	4.55%	1,818.18
12	North Plains	4.55%	1,818.18
13	Oregon City	4.55%	1,818.18
14	Portland	4.55%	1,818.18
15	St. Paul	4.55%	1,818.18
16	Salem	4.55%	1,818.18
17	Tigard	4.55%	1,818.18
18	Troutdale	4.55%	1,818.18
19	Tualatin	4.55%	1,818.18
20	Turner	4.55%	1,818.18
21	Wilsonville	4.55%	1,818.18
22	Wood Village	4.55%	1,818.18
Totals		100.00%	\$ 40,000.00

\$ 40,000.00 ck figure

25.00% % of contract
considered as fixed

\$ 160,000.00 Estimated Budget

EXHIBIT C

ALLOCATION OF VARIABLE COSTS

	PARTY	1999 GROSS REVENUES	%	ESTIMATED COST
1	Beaverton	\$ 41,230,576.50	7.15%	\$ 8,580.16
2	Cornelius	3,241,445.08	0.56%	674.55
3	Durham			-
4	Estacada	1,834,274.55	0.32%	381.72
5	Gresham	51,114,469.62	8.86%	10,637.02
6	Fairview	2,401,473.18	0.42%	499.75
7	Hillsboro	48,487,739.32	8.41%	10,090.39
8	Hubbard	957,733.94	0.17%	199.31
9	Lake Oswego	18,497,482.29	3.21%	3,849.36
10	Milwaukie			-
11	Newberg	8,317,531.75	1.44%	1,730.89
12	North Plains	852,022.74	0.15%	177.31
13	Oregon City	28,471,497.14	4.94%	5,924.97
14	Portland	247,264,865.10	42.88%	51,456.29
15	St. Paul			-
16	Salem	63,110,232.23	10.94%	13,133.36
17	Tigard	25,883,620.44	4.49%	5,386.43
18	Troutdale	6,118,830.24	1.06%	1,273.34
19	Tualatin	15,366,029.87	2.66%	3,197.70
20	Turner	694,951.91	0.12%	144.62
21	Wilsonville	12,795,744.69	2.22%	2,662.82
22	Wood Village			-
	Totals	\$ 576,640,520.59	100.00%	\$ 120,000.00

fictitious #

\$ 120,000.00 ck figure

*Gross revenue as identified by PGE.

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PERSONAL SERVICES CONTRACT

THIS PERSONAL SERVICES CONTRACT ("Contract") is made and entered into this ____ day of _____ 2001, by and between the City of Hillsboro, a municipal corporation of the State of Oregon ("City") and _____ ("Contractor").

RECITALS

- A. City needs the services of an individual with the particular training, ability, knowledge, and experience possessed by Contractor and wishes to continue receiving such services from Contractor.
- B. The parties agree that Contractor shall provide City with such services, on a nonexclusive basis, subject to certain conditions.
- C. The parties wish to set forth the terms and conditions of their agreement in this Professional Services Contract ("Contract").

AGREEMENT

1. **SCOPE OF WORK.** The Contractor shall provide _____ services to the City. [Services can be more particularly described in subparagraphs or an attachment; if the latter, it should be referenced here]

2. **EFFECTIVE DATE AND DURATION OF CONTRACT.** This Contract shall become effective on _____, 2001. Unless earlier terminated, this Contract shall remain in full force and effect until _____, 200__, unless earlier terminated in writing by City or Contractor pursuant to the terms of this Contract.

3. **PAYMENT.** City agrees to pay Contractor fees and costs relating to Contractor's performance under this Contract, as follows:

3.1 [Insert fee structure]

3.2 Reimbursement of photocopying costs equal to \$__ per page, travel costs equal to \$0.29 per mile, excepting _____, and long distance telephone charges and special delivery costs, at a rate equaling the actual charge. [delete/add applicable reimbursable items]

3.3 Contractor shall submit monthly billings for work performed. The billings shall describe all work performed with particularity, by whom it was performed and shall itemize and explain all expenses for which reimbursement is claimed.

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3.4 City shall pay Contractor for the amount billed each month within thirty (30) days after receiving Contractor's billing. City shall not pay any amount in excess of the compensation amounts set forth above nor shall City pay Contractor any fees or costs which City reasonably disputes.

3.5 Contractor is not a contributing member of the Public Employees Retirement System ("PERS") and is not entitled to any PERS contributions. Contractor shall be responsible for all federal and state taxes applicable to any compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, the City will not withhold from such compensation or payments any amount to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

4. **CHANGES.** This Contract, including any of the contract documents, including Exhibit A, shall not be waived, altered, modified, supplemented, extended or amended, in any manner whatsoever, except by written instrument, executed by both parties. Such waiver, alteration, modification, supplement, extension or amendment, if made, shall be effective only in the specific instance and for the specific purpose given.

5. **KEY PERSON.** Contractor acknowledges and agrees that City selected Contractor and is entering into this Contract because of the special qualifications of Contractor's key personnel. In particular, through this Contract, City is engaging the expertise, experience, judgment, and personal attention of _____ ("key person"). Contractor shall not reassign or transfer the key person to other duties or positions, such that the key person is no longer available to provide City with his expertise, experience, judgment, and personal attention, without first obtaining the City's prior written consent to such reassignment or transfer. In the event Contractor requests that City approve a reassignment or transfer of the key person, City shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the key person.

6. **INDEPENDENT CONTRACTOR STATUS.** Contractor shall be free from City's direction and control over the means and manner of providing the labor or service, subject only to the specifications of the desired results. Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law. Contractor shall furnish the tools or equipment necessary for the contracted labor or services.

6.1 Contractor agrees and certifies that:

6.1.1 Contractor is engaged as an independent contractor and will be responsible for any federal or state taxes applicable to any payments made

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under this Contract.

6.1.2 Contractor is not eligible for any federal social security, unemployment insurance payments. Contractor is not eligible for any PERS or workers' compensation benefits from compensation or payments made to Contractor under this Contract.

6.1.3 Contractor has filed federal and state income tax returns in the name of the business as part of the personal income tax return, for the previous year, for labor or services performed as an independent contractor in the previous year.

6.1.4 Contractor agrees and certifies that it is a limited liability partnership in good standing and licensed to do business in the State of Oregon.

6.1.5 Contractor is not an employee of Metro, any special district, or local government, including City, the federal government or the State of Oregon.

7. OTHER CONTRACTORS. City may undertake or award other contracts for additional or related work, and Contractor shall fully cooperate with such additional contractors and with any City employees concerned with such additional or related work, and shall coordinate the performance of work under this Contract and contract documents, with such additional or related work. Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by any City employee.

8. SUBCONTRACTORS, ASSIGNMENT; SUCCESSORS-IN-INTEREST. Except as specifically authorized in the contract documents, Contractor shall not make any subcontract with any other party for furnishing any of the work and services contemplated under the contract documents or assign or transfer any interest in this Contract, without obtaining the express prior written consent of City. In any case, this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns, if any.

9. NO THIRD-PARTY BENEFICIARIES. City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

10. PAYMENT OF LABORERS; PAYMENT OF TAXES

10.1 Contractor shall:

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10.1.1 Make payment promptly, as due, to all persons supplying to the Contractor labor and material for the prosecution of the work provided for in the contract documents;

10.1.2 Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of this Contract;

10.1.3 Not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished; and

10.1.4 Be responsible for all federal, state and local taxes applicable to any compensation or payments paid to the Contractor under this Contract and, unless the Contractor is subject to backup withholding, the City will not withhold from such compensation or payments any amount(s) to cover the Contractor's federal or state tax obligation.

10.2 If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished by any person in connection with this Contract as such claim becomes due, City may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract.

10.3 The payment of a claim in this manner shall not relieve Contractor or Contractor's surety from obligation with respect to any unpaid claims.

10.4 Contractor and subcontractors, if any, are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires provision of workers' compensation coverage for all workers.

11. COMPLIANCE WITH APPLICABLE LAW. Contractor shall comply with all federal, state and local laws and ordinances applicable to the work under this Contract, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, as set forth on attached Exhibit A. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans With Disabilities Act of 1990 (Pub L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation and other applicable statutes, rules and regulations.

12. INSURANCE. Contractor shall obtain prior to beginning any work under this Contract and shall maintain in full force and effect for the term of this Contract, at Contractor's expense, comprehensive general liability and automobile insurance policies for bodily injury, including death, and property damage,

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including coverage for owned, hired or non-owned vehicles, as applicable, for the protection of Contractor and the City of Hillsboro, its elected and appointed officials, officers, agents, employees and volunteers as additional insureds. The policies shall be primary policies, issued by a company authorized to do business in the State of Oregon and providing single limit general liability coverage of \$2,000,000 and separate automobile coverage of \$1,000,000 or the limit of liability contained in ORS 30.260 to 30.300, whichever is greater. The policies shall provide that City will receive thirty (30) days' written notice of cancellation or material modification of the insurance contract at the address listed below. The parties acknowledge that Contractor has provided certificates of insurance to City. If requested, complete copies of insurance policies shall be provided to City. Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

13. PROFESSIONAL LIABILITY INSURANCE. In addition to other insurance requirements stated above, Contractor shall also provide City evidence of professional liability insurance in the amount of not less than \$1,000,000 combined single limit. Contractor shall keep in force and effect the professional liability policy for at least one year after the expiration of the contract with City. In any case, Contractor shall notify City in the event of a cancellation or reduction in limits. Unless such cancellation or reduction is immediately cured by Contractor, such cancellation or reduction constitutes a breach of this Contract.

14. INDEMNIFICATION. Contractor shall indemnify, defend, save and hold harmless the City of Hillsboro, its elected and appointed officials, officers, agents, employees and volunteers against all liability, claims, suits or actions of whatsoever nature, loss or expenses, including attorney fees, and against all claims, actions, judgments based upon or arising out of damage or injury or death to persons or property, but only to the extent caused by a negligent act or omission by the Contractor and anyone acting on Contractor's behalf in connection with, or incidental to, this Contract or the work to be performed hereunder; provided, however, that nothing herewith shall be construed to require indemnification of City attributable to its own negligence.

15. CONFIDENTIALITY. No reports, information and data given to or prepared or assembled by Contractor under the contract documents shall be made available to any individual or organization, except City or the applicant, by Contractor without the prior written approval of City.

16. RECORDKEEPING. Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document the Contractor's performance hereunder. All such fiscal records, books, documents, papers, plans, and writings shall be retained by Contractor and kept accessible for a minimum of three (3) years, except as required longer by law, following final payment and termination of this

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Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

17. **ACCESS TO RECORDS.** Contractor agrees that City and its authorized representatives shall have access to all books, documents, papers and records of the Contractor which are directly related to the Contract for the purpose of making any audit, examination, copies, excerpts and transcripts.

18. **FOREIGN CONTRACTOR.** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Oregon Corporation Division all information required by those agencies relative to this Contract. The parties acknowledge that Contractor has demonstrated its legal capacity to perform these services in the State of Oregon.

19. **GOVERNING LAW; JURISDICTION; VENUE.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit or proceeding (collectively, "the claim") between City and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the State of Oregon. If the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Contractor, by the signature below of its authorized representative, hereby consents to the in personam jurisdiction of said courts.

20. **CONSTRUCTION.** The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Oregon and ordinances of the City of Hillsboro, Oregon. Any action or suits involving any questions arising under this Contract must be brought in the appropriate court of the State of Oregon.

21. **OWNERSHIP OF WORK PRODUCT.** All work products of Contractor that result from this Contract ("the work products") are the exclusive property of City. Contractor shall not otherwise use any work or work products resulting from this Contract without the prior written agreement of City. This Contract shall not preclude Contractor from independently developing materials which may be similar to materials developed pursuant to this Contract.

22. **ERRORS.** Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Contract without undue delays and without additional cost to City.

23. TERMINATION

23.1 This Contract may be terminated at any time by mutual consent of

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both parties, or by Contractor upon sixty (60) days' written notice, delivered by certified mail at the address listed in this Contract, or by facsimile at the facsimile number listed below, or in person.

23.2 In addition, City may terminate or modify this Contract, in whole or in part, effective upon delivery of written notice to Contractor, or at such later date as may be established by City for any reason.

23.3 The rights and remedies of City provided for in paragraph 23.2 above are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

23.4 Termination or modification of this Contract pursuant to paragraph 23.1 or 23.2 above shall be without prejudice to any obligation or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination (regardless whether such notice is given pursuant to paragraph 23.2), Contractor shall immediately cease all activities under this Contract, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, Contractor shall deliver to City all contract documents, information, works-in-progress and other property that are or would be deliverable had the Contract been completed.

24. **ATTORNEY FEES.** If a suit or action is filed to enforce any of the terms of this Contract, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statute, any sum which a court, including any appellate court, may adjudge reasonable as attorney fees.

25. **FUNDS AVAILABLE AND AUTHORIZED.** City has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract.

26. **SEVERABILITY.** The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

27. **FORCE MAJEURE.** Neither City nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond, respectively, City's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

28. **WAIVER.** The failure of City or Contractor to enforce any provision of this

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Contract shall not constitute a waiver by City or Contractor of that or any other provision.

29. **AUTHORIZATION.** The person signing this Contract on behalf of Contractor hereby covenants and warrants he/she is authorized to do so and that his/her signature will fully bind Contractor to the terms and conditions of this Contract. Upon City's request, Contractor shall provide City with evidence reasonably satisfactory to City confirming the foregoing covenants and warranties.

[signature page follows]

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_____ [Contractor name]

By _____

Address: _____

Phone: _____

Federal Tax Identification No. _____

CITY OF HILLSBORO

By _____

Address: 123 W Main Street
Hillsboro, OR 97123

Phone: 503.681.6119 Fax: 503.681.6232

Federal Tax Identification No. _____

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EXHIBIT A
CITY OF HILLSBORO/ _____ [Contractor Name]
PROFESSIONAL SERVICES CONTRACT

The following provisions if applicable are hereby included in and made a part of the attached contract between the City and the Contractor named therein as provided for in the revised statutes of the state of Oregon, and federal laws, rules, regulations and guidelines:

1. **Payment of Laborers and Materialmen, Contributions to Industrial Accident Fund, Liens, and Withholding Taxes (ORS 279.312)**

The Contractor shall:

1.1 Make payment promptly, as due, to all persons supplying to Contractor, labor or material for the prosecution of the work provided for in such contract.

1.2 Pay all contributions or amounts due the Industrial Accident Fund from Contractor or its subcontractor incurred in the performance of the contract.

1.3 Not permit any lien or claim to be filed or prosecuted against the City or any subdivision or agency or employee thereof on account of any labor or material furnished.

1.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

2. **Payment of Claims by Public Officers (ORS 279.314)**

If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or its subcontractor by any person in connection with the public contract as such claim becomes due, the public officer or officers representing the City may pay such claims to such persons furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this contract. The payment of a claim in the manner authorized shall not relieve the Contractor or its surety, if one is required by the contract, from its obligations with respect to any unpaid claims.

3. **Hours of Labor (ORS 279.316)**

3.1 In case of contracts for personal services as defined in ORS 279.051, the employee shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one week, except for individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime.

4. **Payment for Medical Care and Attention to Employees (ORS 279.320)**

4.1 The Contractor shall promptly as due, make payment to any person, co-partnership or association or corporation furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employee of such Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

4.2 The Contractor, its subcontractors, if any, and all employers working under this contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

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5. Labor Contract Conditions

All contracts wherein labor is required, except contracts for the purchase of materials and supplies, shall contain the following provisions:

5.1 The Contractor will comply with all provisions required by the statutes of the state, of contractors on a "public contract," as defined in ORS 279.310(1).

5.2 The Contractor shall, in the event it willfully violates the provisions of this section or knowingly files false affidavits of compliance, waive for a period of one year any right to bid upon any public works project let by the City.

5.3 If Contractor or its subcontractor violates the provisions of this section, the City may, at its option, terminate said contract or subcontract and said Contractor or subcontractor in such event shall forfeit all rights under its contract except to payment for actual labor and materials furnished to the City.

The City may waive in whole or in part any forfeitures or sanctions provided in this paragraph.

6. Nondiscrimination on the Basis of Disability (Americans with Disabilities Act, 42 U.S.C. sec. 12101 et seq.)

The Contractor shall:

6.1 Comply with all requirements of the Americans with Disabilities Act, 42 U.S.C. sec. 12101, et seq., and all regulations implementing the Act, especially including those regulations set forth at 28 C.F.R. sec. 35.130, or any later replacement for those regulations, directly or indirectly applicable to Contractor as a result of a contract with the City.

6.2 To the extent legally possible, Contractor shall indemnify and hold City, its elected and appointed officials, officers, agents, employees and volunteers, harmless from and against any and all claims, actions, liabilities, costs, including costs of defense, arising out of or in any way related to any act or failure to act by Contractor and Contractor's employees, agents, officers and contractors in connection with Contractor's obligations concerning services, aid or benefits to be provided to individuals with disabilities. In the event any such action or claim is brought against City, Contractor shall, upon City's tender, defend the same at its sole cost and expense, promptly satisfy any judgment adverse to City or to City and Contractor jointly, and reimburse City for any loss, cost, damage or expense (including legal fees) suffered or incurred by City. This right of indemnification and to be held harmless shall be in addition to, and not in replacement of any other right that City may have under any statute, under the common law or under this contract.

6.3 By acceptance of this agreement, Contractor warrants that Contractor is familiar with the requirements of the Americans with Disabilities Act and the regulations to enforce the Act. Contractor further warrants that Contractor is in compliance with the requirements of the Act concerning local government services applicable to Contractor as a result of this agreement. Contractor shall continue to comply with all applicable provisions of the Act. City shall have the right to inspect, upon reasonable notice, Contractor's records and all locations where the work is to be performed to assure compliance with all applicable provisions of the Act.



**FINANCE DEPARTMENT
STAFF REPORT**

Date: April 16, 2001

To: Honorable Mayor and City Council

From: Gary S. Wallis, Finance Director

Subject: Intergovernmental Agreement for Review of PGE Franchise Data

SUMMARY:

In anticipation of electricity deregulation, some 22 cities within the Portland General Electric (PGE) franchise area are joining together and planning an independent review and analysis of PGE's franchise data. The review is to accomplish three tasks:

1. Review franchise fees paid in 1999 to ensure that PGE is appropriately calculating "gross revenues" under the franchise agreements, and that the resulting franchise payment to the City is correctly computed.
2. Review the list of customers PGE identifies as within the Wilsonville service area to the database the City maintains to assure agreement.
3. Compute the kilowatt hour franchise fee for each customer type for 1999.

The City of Hillsboro has agreed to be the managing agency. In that capacity they will contract with the audit firm, pay them and in-turn bill each of the participating cities. Tigard has agreed to be the lead agency. They organize and lead the meetings, and provide support to the overall process. Other cities joining the group include Portland, Salem, Gresham, Oregon City and Lake Oswego. A copy of the current draft agreement is attached. A final version is not anticipated to be available until May.

The cost to the City of Wilsonville can only be estimated at this point. This is because the independent review firm has not yet been selected. However, I estimate our share should be less than \$10,000. The costs would be charged to the Finance Department professional services account and are anticipated to come out of the current fiscal year and next year's budgets.

The review may result in discovery that the City has been underpaid for prior franchise fee payments. However, the real advantage of participating in the study will be the determination of the kilowatt hours by customer class. Deregulation calls for a shift from gross revenue to volume of sales and sets 1999 as the base year. It will be vitally

important for future years to have a good reliable base number from which to measure future franchise fee payments.

The City of Wilsonville receives approximately \$465,000 per year under its franchise agreement with Portland General Electric (PGE).

RECOMMENDATION:

Staff recommends approval of the accompanying Resolution which gives authority to the Mayor to sign a final agreement when it is available.

(A copy of the draft agreement is attached to the Resolution.)