

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("Agreement") is entered into no later than February 15, 2017 ("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 ROWAC. (Right of Way Accountability Coalition)

Recitals

- A. The ROWAC desires to hire a consultant ("Consultant") to review and analyze revenues received from Portland General Electric ("PGE") as compensation for the rights and privileges to operate in the public right-of-way ("ROW Fees").
- B. There are savings available to the ROWAC by aggregating the review and analysis, retaining a Consultant to assist them in such review and jointly providing 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 ROWAC agree to the following:

- 1. The ROWAC desire to retain a Consultant to work with the ROWAC in reviewing and analyzing ROW Fees paid by PGE to the ROWAC, including but not limited to an evaluation of gross revenue calculations, and developing recommended procedures to be used by member ROWAC in comparing customer database lists received from PGE with internal databases ("Consultant Services"). In performing the services, the Consultant shall analyze ROW Fees paid to the ROWAC by PGE, pursuant to the ROWAC's respective franchises, licenses, or similar authorization for up to two (2) calendar years. In addition, the Consultant shall obtain PGE customer lists to assist the ROWAC in the database comparison portion of the Consultant Services.
- 2. The Consultant shall be retained through a formal Request for Proposal ("RFP") process. The ROWAC hereby delegate authority to the City of Milwaukie ("Managing Agency") to develop the RFP, select the Consultant and enter into a personal services contract with the Consultant on behalf of all of the ROWAC. The ROWAC acknowledge and agree that the Managing

Agency's standard personal services contract will be used for the procurement of the Consultant Services, and is attached hereto as Exhibit B.

The ROWAC further delegate to the Managing Agency the authority to make administrative decisions on behalf of the ROWAC. The Managing Agency shall make reasonable efforts to keep the ROWAC informed of any decisions made on behalf of the ROWAC.

3. Each Party shall share in the cost of paying the Consultant to perform the Consultant Services as outlined in the RFP, which shall be apportioned as shown in Exhibit C.
4. The Managing Agency shall prepare and submit invoices to each Party as soon as reasonably possible after the Managing Agency receives or makes any payment to the Consultant pursuant to the personal services contract. The Managing Agency will calculate the invoiced amount for each Party based on the percentages set forth in Exhibit C and will include, with each invoice, all back-up information reasonably related to the invoice. Each Party shall pay the Managing Agency within thirty (30) days of the date of the invoice.
5. The ROWAC acknowledge and agree that in the event a Party withdraws from this Agreement, Exhibit C, shall automatically be updated and revised to reapportion the costs among the remaining ROWAC.
6. Any Party may terminate their participation in this Agreement so long as the terminating Party meets all of the following requirements: (a) the terminating Party must provide seven (7) days prior written notice to the Managing Agency; and (b) such notice must be received by the Managing Agency prior to the Managing Agency incurring any costs or making any payments to the Consultant (c) pay any and all amounts owed for work done by consultants up to the date of termination
7. This Agreement shall terminate upon the earlier of five (5) years from the Effective Date or until completion of the Consultant Services. This Agreement may be terminated earlier upon mutual written consent of the majority of the ROWAC, provided that the ROWAC agree to pay any and all amounts owed to the Consultant and the Managing Agency pursuant to this Agreement prior to termination.
8. The ROWAC 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, even if Oregon's choice of law rules otherwise would require application of the law of a different jurisdiction.

- 9 Time is of the essence in the performance of this Agreement.
- 10 This Agreement is for the benefit of the ROWAC 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. Nothing in this Agreement shall be deemed to create a liability for any party in excess of the Oregon tort claims limits for either party.
- 11 No waiver, consent, modification or change of terms of this Agreement shall be binding unless in writing and signed by authorized representatives for each of the ROWAC.
- 12 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 Clackamas County Circuit Court. The ROWAC, by signature below of their authorized representatives, consent to the *in personam* jurisdiction of that court.
- 13 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 ROWAC, 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.
- 14 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.
- 15 This Agreement is the entire agreement of the ROWAC on its subject and supersedes any prior discussions or agreements, oral or written, regarding the same subject.
- 16 This Agreement may be executed in any number of counterparts by any one or more of the ROWAC hereto, and all of these counterparts will be

one Agreement. To facilitate execution of this Agreement, the ROWAC may execute by facsimile transmission the counterparts of the signature pages.

Signature Section for Intergovernmental Agreement for Consultant Financial Review Services for Portland General Electric:

CITY OF MILWAUKIE:

Name: _____

Title: _____

Date: _____

CITY OF GLADSTONE:

Name: _____

Title: _____

Date: _____

CITY OF SALEM:

Name: _____

Title: _____

Date: _____

CITY OF OREGON CITY:

Name: Anthony J. Keltner

Title: City Manager

Date: 1/4/2017

CITY OF SANDY:

Name: _____

Title: _____

Date: _____

Exhibit A

ROWAC members

City of Milwaukie

Reba Crocker
10722 SE Main Street
Milwaukie Oregon 97222
503-786-7516
Crockerr@milwaukieoregon.gov

City of Oregon City

Lance Powlison
POB 3040
Oregon City, Oregon 97045
503-496-1547
Lpowlison@orcitty.org

City of Gladstone

Lance Powlison
POB 3040
Oregon City, Oregon 97045
503-496-1547
Lpowlison@orcitty.org

City of Salem

Ryan Zink
555 Liberty St SE, Room 220
Salem, Oregon 97301
503-588-6258
Rzink@cityofsalem.net

City of Sandy

Lisa Young
ADDY
Sandy, Oregon
503-489-0940
Lyoung@ci.sandy.or.us

Exhibit C

2016 Census

Gladstone	11,986	4.92%
Milwaukie	20,830	8.54%
Oregon City	35,831	14.69%
Salem	164,549	67.48%
Sandy	10,644	4.37%
Totals	243,840	100%

EXHIBIT B



PERSONAL SERVICES AGREEMENT WITH THE CITY OF MILWAUKIE, OREGON FOR FEE REVIEW

THIS AGREEMENT made and entered into this (Day) day of (Month), (Year) by and between the City of Milwaukie, a municipal corporation of the State of Oregon, hereinafter called City, and (Contractor's Name) hereinafter called Contractor.

RECITALS

WHEREAS City has need for the services of a person or an entity with particular training, ability, knowledge, and experience as possessed by Contractor, and

WHEREAS City has determined that Contractor is qualified and capable of performing the professional services as City does hereinafter require, under those terms and conditions set forth,

THEREFORE the Parties agree as follows:

1. SERVICES TO BE PROVIDED

Contractor shall provide services as specified in the Scope of Work, a copy of which is attached hereto, labeled Exhibit A and hereby incorporated by reference. Contractor shall initiate services immediately upon receipt of City's notice to proceed, together with an executed copy of this Agreement.

2. EFFECTIVE DATE AND DURATION

This Agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, by (Month - Day - Year). All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. COMPENSATION

City agrees to pay Contractor not to exceed (Amount in written form) (\$Amount in numerical form) for performance of those services described in the Scope of Work, which payment shall be based upon the following applicable terms:

- A. Payment by City to Contractor for performance of services under this Agreement includes all expenses incurred by Contractor, with the exception of expenses, if any identified in this Agreement as separately reimbursable.
- B. Payment will be made in installments based on Contractor's invoice, subject to the approval of the City Manager, or designee, and not more frequently than monthly. Payment shall be made only for work actually completed as of the date of invoice.
- C. Payment by City shall release City from any further obligation for payment to Contractor, for services performed or expenses incurred as of the date of the invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

- D. Where applicable, Contractor must make payment promptly as due to persons supplying Contractor labor or materials for the execution of the work provided by this order. Contractor must pay all contributions or amounts due from Contractor to the Industrial Accident Fund incurred in the performance of this order. Contractor shall not permit any lien or claim to be filed or prosecuted against City or any subdivision of City on account of any labor or material to be furnished. Contractor further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- E. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person as such claim becomes due, City's Finance Director may pay such claim and charge the amount of the payment against funds due or to become due the Contractor. The payment of the claim in this manner shall not relieve Contractor or their surety from obligation with respect to any unpaid claims.
- F. If labor is performed under this order, then no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, or emergency or where the public policy absolutely requires it, and in such cases, except cases of contracts for personal services as defined in ORS 279A.055, the labor shall be paid at least time and a half for all overtime in excess of eight (8) hours a day and for all work performed on Saturday and on any legal holidays as specified in ORS 279B.020. In cases of contracts for personal services as defined in ORS 279A.055, any labor shall be paid at least time and a half for all hours worked in excess of forty (40) hours in any one week, except for those individuals excluded under ORS 653.010 to 653.260 or under 29 USC SS 201-209.
- G. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of Contractor or all sums which Contractor agrees to pay for such services and all moneys and sums which 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.
- H. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. OWNERSHIP OF WORK PRODUCT

City shall be the owner of and shall be entitled to possession of any and all work products of Contractor which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by Contractor prior to termination of this Agreement by Contractor or upon completion of the work pursuant to this Agreement.

5. ASSIGNMENT/DELEGATION

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontract, Contractor shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by City of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and City.

6. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR

Contractor certifies that:

- A. Contractor acknowledges that for all purposes related to this Agreement, Contractor is and shall be deemed to be an independent contractor as defined by ORS 670.700 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of said finding.
- B. The undersigned Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

If this payment is to be charged against Federal funds, Contractor certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.

Contractor and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.
- C. Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- D. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7. INDEMNIFICATION

City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a contractor's work by City shall not operate as a waiver or release.

Contractor agrees to indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except to the extent that the liability arises out of the sole negligence of the City and its employees. Such indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

8. INSURANCE

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all activities of the contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier. Such insurance shall be primary and non-contributory.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverage:

A. Commercial General Liability Insurance

Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$3,000,000
Products-Completed Operations Aggregate	3,000,000
Personal & Advertising Injury	3,000,000
Each Occurrence	2,000,000
Fire Damage (Any one fire)	500,000
Medical Expense (Any one person)	5,000

B. Commercial Automobile Insurance

Contractor shall also obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

C. Professional Liability Insurance Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per occurrence shall not be less than \$2,000,000. Annual aggregate limit shall not be less than \$2,000,000.

D. Workers' Compensation Insurance

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract who are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide workers' compensation coverage for their workers that complies with ORS 656.126. Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident shall be included.

E. Additional Insured Provision

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City, its officers, directors, employees and volunteers as additional insureds with respect to this contract.

F. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days' notice of cancellation to the City.

G. Insurance Carrier Rating

Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

H. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Contractor shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.

Certificates of Insurance should read "Insurance certificate pertaining to contract for Fee Review. The City of Milwaukie, its officers, directors and employees shall be added as additional insureds with respects to this contract. A notation stating that "Insured coverage is primary" shall appear in the description portion of certificate.

I. Independent Contractor Status

The service or services to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.

J. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

K. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in the general liability policy.

Contractor's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

City of Milwaukie
Attn: Finance
10722 SE Main Street
Milwaukie, Oregon 97222

Business Phone: 503-786-7555
Business Fax: 503-653-2444
Email Address: finance@milwaukieoregon.gov

Such policies or certificates must be delivered prior to commencement of the work.

The procuring of such required insurance shall not be construed to limit contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

9. METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail, email or by fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall

be used to transmit notices, bills, payments, and other information:

City	Contractor
City of Milwaukie	Company: (insert name of firm)
Attn: Reba/Accounts Payable	Attn: (insert contract manager's name)
10722 SE Main Street	Address: (insert contract manager's address)
Milwaukie, Oregon 97222	
Phone: 503-786-7516	Phone: (insert #)
Fax: 503-786-7516	Fax: (insert #)
Email Address: crockerr@milwaukieoregon.gov	Email Address: (insert address)

And when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, or when so faxed, shall be deemed given upon successful fax. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to who notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

10. MERGER

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

11. TERMINATION WITHOUT CAUSE

At any time and without cause, City shall have the right, in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the contract pursuant to this paragraph, it shall pay Contractor for services rendered to the date of termination.

12. TERMINATION WITH CAUSE

A. City may terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

- 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
- 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- 3) If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 4) If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:

- 1) If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2) If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (B), Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Contractor bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Contractor. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

13. ACCESS TO RECORDS

City shall have access to such books, documents, papers and records of Contractor as are directly pertinent to this Agreement for the purpose of making review, examination, excerpts and transcripts.

14. FORCE MAJEURE

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disenabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

15. NON-WAIVER

The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

16. NON-DISCRIMINATION

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

17. ERRORS

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

18. EXTRA (CHANGES) WORK

Only the Right-of-way Contract Coordinator, Reba Crocker may authorize extra (and/or change) work. Failure of Contractor to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such work.

19. WARRANTIES

All work shall be guaranteed by Contractor for a period of one year after the date of final acceptance of the work by the owner. Contractor warrants that all practices and procedures, workmanship and materials shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve Contractor from liability under warranties contained in or implied by this Agreement.

20. ATTORNEY'S FEES

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

21. GOVERNING LAW

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

22. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapters 279A and 279B, the provisions of which are hereby made a part of this agreement

23. CONFLICT BETWEEN TERMS

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

24. REVIEW

Contractor shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the contract period. Contractor agrees to permit City, the State of Oregon, the federal government, or their duly authorized representatives to review all records pertaining to this Agreement to assure the accurate expenditure of funds.

25. SEVERABILITY

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

26. COMPLETE AGREEMENT

This Agreement and attached exhibits constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor, by the signature of its authorized representative, hereby acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Contractor has executed this Agreement on the date hereinabove first written.

CITY OF MILWAUKIE**CONTRACTOR**_____
*Signature*_____
*Signature*_____
*Printed Name & Title*_____
*Printed Name & Title*_____
*Date*_____
Date

EXHIBIT A
SCOPE OF WORK FOR FEE REVIEW

BACKGROUND

Several local governments in and around the Portland metropolitan area have a shared interest in performing a fee review of utility companies required under license, agreement, franchise or municipal code to remit fees for the right and/or privilege of operating in the political subdivision's rights-of-way. This shared interest has resulted in the formation of Rights-of-Way Accountability Coalition (ROWAC) and members are currently in the process of entering into an ORS 190 agreement. ROWAC is seeking proposals from firms or teams with recent demonstrated successes and experience in audits/reviews of utility companies. The initial focus of the ROWAC is on Portland General Electric (PGE) an electrical utility provider serving the vast majority of the residents within each participating municipality.

ROWAC feels a joint fee review will have benefits for participating parties and will also ease the fee review process for the company being reviewed. The review will include obtaining answers to questions and performing certain agreed upon procedures.

PROJECT OVERVIEW

Franchise fees, privilege taxes and rights-of-way (ROW) usage fees account for a significant portion of city revenues, and electrical fees are often make up the largest portion of these fees.

Payments from any one company may fluctuate from year to year, and it may not be readily evident why this fluctuation occurs. In addition, city boundaries change over time with annexation. Furthermore, most fees are based on some definition of "gross revenues." While this might appear to be simple, straight-forward term, within utility accounting procedures these are opportunities to assign revenues to other operations or other classifications which could reduce the amount of gross revenue report by the utility.

In addition to these "general prudence" issues, there are specific reason to review/audit PGE now. Since ROW usage fee revenue is a significant portion of city revenues, the Parties have a fiduciary responsibility to ensure the fees are calculated correctly.

SCOPE OF WORK: The purpose is to obtain answers to the following:

1. Are the revenues recorded in PGE's adjusted "list of revenue accounts," for the calendar year 2015 & 2016 traceable to PGE's published financial statements and/or filing with the Securities and Exchange Commission (SEC), Public Utilities Commission (PUC), or some other regulatory body?
2. From the adjusted "list of revenue accounts" for the calendar years, has PGE included all the revenue from which fees are calculated, given each Party's definition of "gross revenue"?
3. Are PGE's customer accounts coded to the proper member jurisdiction? This may be done by comparing PGE's customer account lists to the Parties databases. The consultant must be able to develop certain

agreed upon procedures to ensure customer revenue is being credited to the appropriate Party for purposes of calculation the franchise fee/privilege tax remitted to each Party.

4. Is PGE correctly calculating fees due (franchise fees and privilege taxes), in accordance with each member Parties franchise and/or agreements?
5. Is PGE correctly identifying and reporting to the member Parties, any attachments to structures and reporting revenue in accordance with each Parties requirements?
6. Is PGE correctly identifying and reporting to the member Parties, any usage of PGE equipment, located in the Parties rights-of-way, by others?
7. Based on the above questions, and a comparison to the fees paid to each Party, is a “true-up” payment due?

OBJECTIVES:

1. Review Phase:
 - a. Review and understand each member Parties franchises, agreements and applicable laws/code that apply to PGE’s payment to member cities.
 - i. Each member will supply applicable municipal codes, franchises, agreements and relevant documents.
 - ii. Consultant(s) should be familiar and all applicable State and Federal regulations and be able to apply such to each aspect of the review.
 - b. Review relevant supporting documentation used in the computation of the payments to each member Party.
 - c. Review and analyze PGE’s general ledger and financial statements. Compare and analyze the data for reasonableness, completeness, and accuracy as related to the fees.
 - d. Identify any revenues excluded from the fee calculations.
 - e. Review and analyze all PGE’s revenue accounts in detail to:
 - i. Determine revenues that are to be included or excluded from the computations, if any, and determine if PGE is permitted by each member’s agreements/franchise/code to do such.
 - ii. Determine if PGE or any of its subsidiaries receive revenue from customers or third parties for the use of PGE’s facilities located with each members ROW are authorized by the agreement/franchise/code that are not included in the fee calculation used to determine the payments to the members.
 - iii. Determine and identify if PGE or any of its subsidiaries receive revenue from customer or third parties for the use of PGE’s facilities located within each members ROW that is not authorized by agreement/franchise/code/law.
 - f. Develop a set of agreed upon procedures or work plan to review PGE fees made to individual Member of the calendar years and customer lists.
 - g. Customer List Review
 - i. Advise member Parties on methodology for comparing PGE customer lists with city address list to ensure that all gross review generated within each member city are properly identified and reported by PGE.

- ii. Assist member Parties in developing computerized data base comparison protocols to check PGE customer lists and related revenue reports against city address list.
- iii. Obtain PGE customer data from calendar years in a format compatible to member Parties and PGE. Provide this data to each member city for comparison to city database.
- iv. Work with member Parties to resolve database comparison problems on an as needed bases.
- v. Review member city database comparisons for accuracy, completeness, and ensure that address are counted by no more than one member city.
- vi. Calculate any over or under payments of PGE franchise fees, Privilege taxes arising from member Parties' Customer List Reviews.

h. Gross Revenue

- i. Gain an understanding of how each individual member city defines "Gross Revenues" and other terms relevant to the calculation and payment of fees by PGE.
- ii. Review PGE's systems for reporting and calculating "Gross Revenues" for each calendar year.
- iii. Identify any issues within PGE's Gross Revenue reporting and accounting systems.
- iv. Identify the impacts these issues may have had on the calculation of fees during the calendar years.
- v. Identify the total over or under payment of fees paid to each member Party.
- vi. Recommend a course of action PGE and member Parties could pursue in correcting any noted deficiencies on either PGE's reporting and accounting systems or the Parties notification processes.

2. Post-Review Phase

a. Presentation of Results

- i. Present results to at least one meeting of ROWAC, and, if requested, to one meeting of the Parties with PGE.

b. Reports

- i. Upon completion of the review, prepare a written report documenting the scope of work, methodology, procedures followed, major findings and conclusion, and any recommendations for changes in noted deficiencies. The report should include separate sections for each member municipality showing the amount of any identified over or under payment for each of the subject years and discussing issues of particular concern to the that specific member.
- ii. Provide one (1) hard copy of the final report for each member city and one (1) for PGE. In addition, provide an electronic copy of the final report to the managing agency and lead agency of ROWAC (Milwaukie City and Oregon City).