



Resolution No. 2003-009

A RESOLUTION TO PARTICIPATE IN AN AUDIT OF VERIZON FRANCHISE FEES

WHEREAS, a consortium of municipalities has been formed to audit telecommunication franchise fees; and

WHEREAS, the City wishes to participate in this audit;

NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:

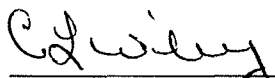
Section 1. The City Manager is authorized to sign the Intergovernmental Agreement shown hereon as Exhibit A.

Duly passed by the City Council this 14th day of January, 2002.



Mark O. Cottle, Mayor

ATTEST:



C.L. Wiley, City Recorder

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("Agreement") is entered into no later than December 20, 2002 ("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 incumbent local exchange company(s) ("Franchisee"), which is the subject of this "Telecommunications Financial Review Services" for the City of SHARWOOD is VERIZON.
- B. The Parties desire to hire a consultant ("Consultant") to review and analyze revenues received from incumbent local exchange carriers as compensation for the rights and privileges to operate in the public right-of-way. The specific incumbent local exchange carriers, and the mechanisms under which these payments are made, may vary as between the Parties, however, the revenue base is uniform throughout and consistent with state statute.
- C. There are savings available to the Parties by aggregating the review and analysis, retaining a Consultant to assist them in such review and jointly providing funds to pay such Consultant.
- D. 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 Franchisee 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 Franchisee with internal databases ("Consultant Services"). In performing the services, the Consultant shall analyze franchise, utility license, permit or other fees paid to the Parties by Franchisee, pursuant to the Parties' respective telecommunications franchises, permits or licenses, for up to ten (10) calendar years. In addition, the Consultant shall obtain Franchisee customer lists to assist the Parties in the database comparison portion of the Consultant Services.

2. The Parties hereby delegate authority to the City of Hillsboro to 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 will be used for the procurement of the Consultant Services.

The Parties further delegate to the City of Portland and the City of Hillsboro ("Joint Lead Agencies") and the City of Hillsboro ("Managing Agency") the authority to make administrative decisions on behalf of the Parties. The Joint Lead Agencies and the Managing Agency shall make reasonable efforts to keep the Parties informed of any decisions made on behalf of the Parties.

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 A labeled *Total Contract Cost* for the Consultant Services may only be modified through separate written agreement signed by authorized representatives for each of the Parties to this Agreement.
5. The percentage used in Exhibit A to determine the amount of the Consultant contract that is considered fixed may only be modified through separate written agreement signed by authorized representatives for each of the Parties to this Agreement.
6. Each Party shall be responsible for paying a share of the Fixed Costs relating to the Consultant Services, as shown in Exhibit A. The Fixed Cost allocation is non-refundable in the event a Party should withdraw from this Agreement.
7. Each Party shall be responsible for paying a share of the Variable Costs, defined as the Total Cost of the Consultant Services less the Fixed Costs, which shall be apportioned as shown in Exhibit A.
8. Each Party shall remit its share of the Fixed Cost to the Managing Agency within thirty (30) days after executing this Agreement. Upon finalization of the cost allocation for the Consultant Services, each Party shall remit any remaining unpaid share of the total Fixed Cost to the Managing Agency. The City of Hillsboro shall prepare and submit invoices to each Party immediately after the Agreement is executed and the cost allocation is finalized.
9. The Managing Agency shall prepare and submit Variable Cost invoices to each Party as soon as reasonably possible. The Managing Agency 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 A, shall automatically be updated and revised to reapportion the Variable Cost among the remaining Parties.
11. 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 Joint Lead Agencies; (b) such notice must actually be received by both the Managing Agency and the Joint Lead Agencies 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.
12. This Agreement shall terminate upon the earlier of five (5) years from the Effective Date or until completion of the Franchisee Telecommunications Financial Review. This Agreement may be terminated earlier upon mutual written consent of the majority 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, even if Oregon's choice of law rules otherwise would require application of the law of a different jurisdiction.
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 authorized representatives for each of the 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, oral or written, 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 Section for Intergovernmental Agreement for Consultant
Telecommunication Financial Review Services:***

Name: _____

By: _____

Date: _____

Franchisee subject to Telecommunication Financial Review Services:

_____ Qwest

_____ Verizon

_____ Both – Qwest and Verizon

Council Meeting Date: 01-14-03

Agenda Item: _____

TO: Sherwood City Council

FROM: Chris Robuck, Finance Director

SUBJECT: **IGA for audit of Verizon franchise fees – RESOLUTION 2003-009**

ISSUE: Should the City participate in an audit of Verizon franchise fees?

BACKGROUND: Last year, Sherwood participated with 23 other Cities in an audit of PGE franchise fees. The audit found numerous addresses in the City for which franchise fees were not being paid. The cost of participation was less than \$2,000; the amount received for underpaid franchise fees was \$90,000.

A group has been formed to audit Qwest and Verizon telephone franchise fees. Staff expect that the fees recovered on this audit will exceed the cost, though not as dramatically as with PGE. The return on this audit will be less because Verizon franchise fees are about a third of PGE's. This audit will also be more expensive. The estimated cost to Sherwood is \$2,600 if staff does address verification, and \$8,600 if the consultant does address verification. The decision about who does address verification will depend on the quality of the data received from Verizon.

This audit is expected to take about a year. The same group plans to undertake an audit of Northwest Natural, our largest payor of franchise fees, as soon as the Qwest/Verizon audit is complete.

RECOMMENDATIONS: Staff recommends approval of the attached Resolution with Exhibit (IGA).