

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING A) RESOLUTION NO. 90-1196
SOLE SOURCE CONTRACT WITH PORT-) Introduced by
LAND GENERAL ELECTRIC (PGE) FOR) Rena Cusma, Executive Officer
EXCHANGE OF DIGITAL DATA)

WHEREAS, Section 2.04.033(b) of the Metro Code requires the Council must approve certain contracts; and

WHEREAS, The contract represents an agreement with PGE for exchange of digital data, establishes use restrictions and permits limited third party licensing agreements as outlined in the Exhibits attached hereto; and

WHEREAS, Said contract, while not obligating the Metro to future year expenditures, represents a commitment to pass through to PGE \$25,000 in royalties from future third party licensing agreements for the four-year duration of this agreement and, if \$25,000 has not been returned after four years, to provide a credit toward dues or fees for Metro products and services in the amount of the difference between revenues passed on to PGE and \$25,000; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District hereby approves the agreement with Portland General Electric, Exhibit A, attached hereto.

ADOPTED by the Council of the Metropolitan Service District this 11th day of January, 1990.



Tanya Collier, Presiding Officer



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

EXHIBIT A TO RESOLUTION NO. 90-1196

December 13, 1989

Mr. Tom Allender, Supervisor
Mapping Services
Portland General Electric
121 SW Salmon Street
Portland, Oregon 97204

Dear Mr. Allender:

Following is a proposed data exchange agreement between the Metropolitan Service District (Metro) and Portland General Electric (PGE) similar to your agreement with the City of Portland but adding the increased confidentiality from SB 207-A, effective October 2, 1989.

Scope

This agreement provides for exchanges of digital data between PGE and Metro, establishes use restrictions, and permits limited third-party licensing agreements.

PGE will provide certain digital land base data required by Metro in computer-readable format for the purpose of RLIS planning and database expansion applications by Metro and its jurisdiction members in exchange for access to or copies of Metro's digital RLIS database. Detailed data file specifications for Metro's RLIS data will be provided at the time of data delivery.

PGE Digital Land Base Data Description

PGE has computer graphic data in Intergraph format files containing 512 byte blocks of data. Graphic data elements contained in these files illustrate land features such as streets, tax lot lines, rivers, and streams, which are geographically controlled to the Northern Oregon State Plane Coordinate System and stored on 1-57 data levels within the land base file.

Data to be Exchanged

The following levels of graphic data will be extracted from the PGE digital land base files and placed in specific Metro files (ASCII format):

Executive Officer
Rena Cusma

Metro Council

Mike Ragsdale
Presiding Officer
District 1

Gary Hansen
Deputy Presiding
Officer
District 12

Lawrence Bauer
District 2

Jim Gardner
District 3

Richard Devlin
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Judy Wyers
District 8

Tanya Collier
District 9

Roger Buchanan
District 10

David Knowles
District 11

PGE Land File

<u>Level</u>	<u>Description</u>
1	Streets (lines, curves, and cul-de-sacs)
2	Street Names
3	Street Names (switch map)
9	PGE Properties
11	Lot Lines
12	Lot Numbers
13	Subdivision Names
16	Section Boundaries
17	Section Labels
18	Section Corners
21	Buildings
22	Building Names
26	City Boundaries
27	City Boundary Labels
31	Railroads
32	Railroad Names
33	Railroad Names (switch map)
36	County Boundaries
37	County Boundary Labels
41	Streams and Creeks
42	Rivers and Lakes
43	Water Names
44	Water Names (switch map)
46	Township Boundaries
47	Township Boundary Labels
48	Township Boundary Labels (switch map)
51	Miscellaneous Land Features and Names
52	Rights-of-way
56	Division Boundaries
57	Division Boundary Names

The data to be transferred from Metro's Regional Land Information System (RLIS) to PGE include the following:

- PGE's land base quarter-section maps edited to be consistent with the most current county assessor maps available to Metro at the time editing is conducted
- Tax lot numbers linked to parcel polygons
- County tax assessor data files correlated to tax lot number system and including items such as ownership, value, tax rate and property use code

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- Land use zoning classification
- Comprehensive plan classification
- Development constraints (e.g., flood plain or steep slopes)
- Infrastructure availability (e.g., sewer and water)
- Transportation system
- Parks and open space
- Political boundaries (e.g., city, special service district, or taxing district)
- U.S. Census Bureau data

Data Transfer Media

The data will be delivered by each party on nine-track, 1,600 bpi-density magnetic tape.

Data Delivery Time Schedule

Metro intends to develop its RLIS database according to the production schedule attached as "Exhibit A." This preliminary schedule may change without prior agreement by PGE, subject to member government assistance and Metro monies available for certain contractual services. Therefore, "Exhibit A" will be revised by Metro as the availability of additional developmental resources becomes known.

Terms and Conditions

This agreement is subject to the following terms and conditions:

1. Consideration

Metro agrees to make available to PGE copies of Metro's digital RLIS database as consideration for use of the PGE digital land base data. For up to four years, as revisions and updates to the database occur, Metro will provide such revisions to PGE with the same distribution schedule and conditions established with its dues-paying jurisdictions. The cost of annual RLIS revisions and updates shall be waived until such time as

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the PGE land base file no longer serves as the primary mapping base for RLIS or four (4) years from the date of this agreement, whichever comes first. This may be extended by written agreement of the parties if Metro editing has not substantially upgraded the original PGE file.

After four years from the date of this agreement, Metro agrees to make available to PGE copies of revisions and updates to the RLIS database with the same distribution schedules established with dues-paying jurisdictions, so long as such revisions and updates are made available to non dues-paying entities. PGE shall pay for RLIS revisions and updates based on Metro's actual costs only, as determined by Metro's cost recovery model.

Any costs incurred by either party necessary to accomplish the transfer of data are part of the consideration for the exchange of data products described in this agreement.

3. Acceptance, Testing, and Date of Acceptance

After delivery of data, the recipient shall perform acceptance testing for 10 days. The recipient may accept or reject the data during this testing period. Causes for rejection shall be limited to errors in transfer of data from host computer to nine-track media, resulting in files inadequate for downloading and reconstruction into a useful digital product and/or substantial and consistent inaccuracy and misinterpretation of information in the database. The provider shall have the right to correct within a reasonable time any data transfer errors identified in writing by recipient within this testing period. The date of acceptance is the day the recipient notifies the provider in writing that the data is acceptable. If the recipient fails to provide the provider with written notice of rejection within the stated testing period, the data shall be deemed acceptable by the recipient the 10th day after delivery. Any dispute involving delivery, testing, acceptance or rejection of data shall be settled by arbitration under ORS 33.210 et seq.

4. Use Restrictions and License Fees

PGE has unrestricted use of RLIS data for internal company functions. If PGE transfers or sells the RLIS data or products created using RLIS data in any form to any parties outside the company, Metro shall provide and PGE shall require the use restrictions and any user license fee on the form of user license agreement used by Metro at the time of transfer for Metro sales of comparable RLIS data or products.

Metro may not transfer or sell the PGE data files received by Metro in digital form to any party outside of Metro's organization or its governmental membership structure without the express approval of PGE. This approval will include use restrictions and a user license fee paid to PGE.

Metro transfers or sales of the RLIS data in digital form containing the data received from PGE to parties other than dues-paying governments, shall include the use restrictions and user agreement attached as "Exhibit B" as an express condition of such sale or transfer. Metro shall retain any license fees from such RLIS sales or transfers, except that PGE shall receive up to \$25,000 for its license fees from such resales of RLIS data that may occur within four years of the execution of this Agreement. If PGE has received less than \$25,000 in license fees at the end of the four years, the difference between \$25,000 and the amount received by PGE shall be credited toward fees for Metro products and services at the published rates from that time forward.

5. Warranties

Metro and PGE each warrant that their respective data does not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. Should either Metro or PGE breach this warranty, each agrees to indemnify the other for, and hold the other harmless and defend the other from, any infringement or violation. If Metro or PGE is prevented from using the other party's data because of such infringement or violation, the party supplying the data shall, at its discretion and at no cost to the other party, use best efforts to produce the right to continue using the data or replace or modify it to make it non-infringing. If such efforts fail to achieve the

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stated goal, both parties shall accept the return of the data.

Metro and PGE shall include a written disclaimer of warranties as to accuracy of data in every sale of license to use by third parties.

Metro shall use its best efforts to ensure that the product is delivered free of defect.

In the event of any claim arising from any alleged infringement for use of PGE supplied data by any third party against Metro, Metro shall promptly notify PGE, and PGE shall defend such claim in Metro's name at PGE's expense and shall indemnify and hold harmless Metro from and against any loss, cost, expense, or liability arising out of such claim, whether or not such claim is successful. If Metro is prevented from using the data because of such infringement, PGE, at its discretion, shall, at no cost to Metro, use best efforts to produce the right to continue using the product or replace or modify it to make it non-infringing. If PGE fails to achieve the foregoing, PGE shall accept the return of the data.

Data described in this agreement will be delivered as is. In no event shall either Metro or PGE be liable for consequential damages, even if Metro or PGE has been advised of the possibility of such damages.

6. Confidentiality

Metro and PGE mutually agree to keep in confidence any and all source material and data exchanged pursuant to this agreement to the full extent allowed by law unless either Metro or PGE state in writing that portions of particular source material and data are not of a proprietary nature.

Pursuant to 1989 Oregon Laws, Chapter 476, Metro shall incorporate PGE data into its geographic database and claim full exemption from the public disclosure requirements of ORS 192.502.

Further, each party agrees to disclose source material and data delivered by the other party only to their respective personnel to whom knowledge of this source material or data is required for the proper performance

of their regular job and to cause such personnel to hold said source material and data in confidence.

It is understood that Metro will combine data from a variety of other sources to enhance the source material and data delivered by PGE, creating its RLIS database. Metro has the right to distribute digital copies of the RLIS database to Metro dues-paying member jurisdictions and other third parties, subject to the recipient's execution of Metro's licensing agreement protecting RLIS confidentiality.

7. Indemnity

Each party hereby agrees to defend, indemnify, and hold harmless the other from and against all liability, losses, costs, and expenses (including reasonable attorney fees at trial and on appeal) which the other may incur by reason of the fault or negligence of a party, its employees, or authorized representatives arising out of the performance or nonperformance of the party's obligation under this agreement.

8. Waiver

None of the provisions of this agreement shall be considered waived by PGE or Metro unless such waiver is given in writing by either party. No such waiver shall be a waiver of any past or future default of any of the provisions of this agreement unless expressly stipulated in such waiver.

9. Assignability

Neither party shall have the right to assign or otherwise transfer this agreement or the party's rights hereunder except with the written consent of the other party, except that a successor, in interest of the entire or a significant portion of the business of a party, shall acquire all of the interests of the party.

10. Severability

If any portion of this agreement shall be held invalid or inoperative, the remainder of this agreement shall be considered valid and operative and effect shall be given to the intent manifested by the portion held invalid or inoperative.

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11. Attorney Fees

If either party institutes suit or action to enforce or interpret this Agreement, or any documents or matter referred to in this Agreement, the prevailing party shall be entitled to recover from the other party all costs and disbursements incurred in connection therewith, including, but not limited to, attorney fees at trial and on appeal.

12. Governing Laws

This agreement shall be governed by the laws of the State of Oregon.

To accept this proposal, please initial each page, authorize with your signature and return the original to Metro. This proposal is good for thirty (30) days from the date of this document. Thank you for consideration of this proposal.

Sincerely,



Richard Bolen
Data Resource Center Manager

PORTLAND GENERAL ELECTRIC COMPANY

C.G. Anderson, Vice President
Customer Relations

METROPOLITAN SERVICE DISTRICT

Richard Engstrom
Deputy Executive Officer

EXHIBIT A

This exhibit addresses the time frame required for RLIS development. The experience gained from building a prototype of RLIS has been used to estimate the production time needed for each map data layer. The resulting production schedule represents the base case scenario -- the time it will take for Metro staff, unassisted, to produce a fully operational GIS for this region. Using this base scenario as a beginning point, strategies for compressing the production time frame are explored.

Production time requirements were developed by estimating a per section-time factor for each map data layer. Some factors were the same for every quarter-section in the region (e.g., flood plains), and others varied, usually depending upon the type of location; for example, suburban or urban.

PRODUCTION TIME REQUIREMENTS

<u>Map Data Layer</u>	<u>Time Required</u>
Parcel Base Map	15.0 months
Tax Assessor Data/Land Use	1.5 months
Vacant Land	1.6 months
Zoning	2.8 months
Comprehensive Plans	1.6 months
Flood Plains	.4 months
Sewer and Water	.5 months
Parks and Open Space	.3 months
Transportation	.5 months
Boundaries	1.4 months
Collection of Source Materials	<u>1.0 months</u>
Total	26.5 months

Contract Services

Several elements of the database could be contracted out. These elements amount to 16.2 months of the total 28-month production schedule as itemized below.

<u>Map Data Layer</u>	<u>Base Case</u>	<u>Accelerated</u>		<u>Members</u>
	<u>Scenario</u>	<u>Development Scenario</u>		
	<u>(Metro-Unassisted)</u>	<u>Metro</u>	<u>Contractor</u>	
Parcel Base Map	15.0	_____	15.0	3.3 months
Tax Assessor Data/ Land Use	1.5	1.5	_____	_____ months
Vacant Land	1.6	1.1	.5	.2 months
Zoning	2.8	2.8	_____	_____ months
Comprehensive Plans	1.6	1.6	_____	_____ months
Flood Plains	.4	_____	.4	.1 months
Sewer and Water	.5	.5	_____	_____ months
Parks and Open Space	.3	.3	_____	_____ months
Transportation	.5	.2	.3	_____ months
Boundaries	1.4	1.4	_____	_____ months
Collect Source Material	1.0	1.0	_____	_____ months
Total	26.2	10.4	16.2	3.7 months

This table shows that it is possible to compress the development time frame by as much as 16 months. To do this will require additional one-time developmental funding for RLIS. This option will be presented to the Metro Executive Officer for consideration as part of the upcoming budget planning process for FY 1990-91.

System Reductions

There is limited potential for shortening the delivery time by eliminating RLIS components. Each of the 10 map data layers are interrelated and removing one or more can seriously impact system capabilities. For example, if the Parks and Open Space layer is removed, it is not possible to use the Vacant Land layer to differentiate between park lands and those available for development.

Therefore, the 10 layers and their current data structures are probably the functional minimum for a land information system with the user requirements of RLIS. In addition, it does not appear feasible to save time by simplifying some of the map layers. Considerable work has already been done to reduce unnecessary complexity and non-essential data items. For example, the Infrastructure Layer includes the minimum set necessary, the presence or absence of sewer/water facilities and the service provider.

Conclusion

It appears feasible to compress the RLIS development time line from 9 to 16 months. If full funding of the contractual service option were obtained, the result could be a delivery time of January to June 1991. Including assistance from member jurisdictions, contractual costs can be reduced by 22 percent.

PRODUCT LICENSING AGREEMENT
TERMS AND CONDITIONS

THIS AGREEMENT is a license and is made and entered into by and between METRO, acting by and through the Data Resource Center (hereinafter referred to as "DRC"), and the client identified on the reverse (hereinafter referred to as "User").

WHEREAS, DRC is the designer and developer of the copyrighted product(s) specified in the agreement (hereinafter referred to as "Product") with the right to license and distribute the Product; and

WHEREAS, the User is an individual, an organization, a corporation, a government entity or a member of a joint venture who will make use of the Product in its business activity; and

WHEREAS, the User desires a license to use the Product and the DRC desires to grant such a license to the User for the sole purpose of permitting the User to use the Product in its business activity and for no other purpose whatsoever;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions set forth herein, the parties hereto agree as follows:

1. PRODUCT

1.1 Licensed Product(s). This license applies to the Product(s) as listed on the reverse side hereof.

1.2 Grant of License. For and in consideration of the User's covenant to make payments under Section 5 and the performance of the other covenants and obligations of the User hereunder, the DRC hereby conveys to the User a nonexclusive license to use the Product.

2. USE

2.1 Permitted Use. This license is granted for the sole purpose of permitting the User to use the Product in its business activity and for no other purpose whatsoever.

2.2 Restrictions on Use.

(a) Unauthorized Use. User shall not allow access to Product by any other person or organization by means of networks, timesharing, or multiple CPU arrangements, unless authorized in writing by DRC.

(b) Copies. User shall not duplicate the Product except for the following:

1. User may make one copy of the Product for protection purposes as long as the User agrees not to use the backup copy for any purpose other than to replace original data if lost or damaged.

2. User may translate the Product into other formats and/or media. These "reformats" shall be subject to the same restrictions as the Product under this agreement.

2.3 Reserved Rights. DRC shall retain all rights, title and interest in the Product, including the right to license the Products covered by this license to other users.

The confidentiality of the source material and data delivered by DRC shall be maintained by User to protect both the interests of DRC and PGE's interest in its data incorporated into the RLIS database. For users subject to Public Records Laws, this shall include claiming full exemption from public disclosure available in cases specifically including applicable exemptions in ORS 192.502.

3. MAINTENANCE OF DIGITAL DATA

3.1 Annual Update. DRC intends to supply a data update service for digital data for an additional fee. The service is anticipated to consist of one annual update of licensed digital data

unless otherwise specified. DRC updates will be provided in its then current format.

4. TERM

4.1 The term of this agreement shall not be restricted as to time, except as set forth in 4.2 below. The agreement shall commence on the date the agreement is executed and continue so long as the product is in the possession of the User.

4.2 The term of the license shall expire at such time as the User discontinues use of the Product or the User fails to comply with any of the terms and conditions provided herein at which time the license shall be revoked. The license shall be revoked by DRC giving written notice of such revocation to the User. Upon receipt of the revocation, the User shall return all copies of the licensed product.

5. PAYMENT

5.1 Time for Payment. Initial payment of fees shall be made at the time the license is granted or as set forth in 5.2 or 5.3.

5.2 Annual Updates and Revisions. The fees for updates and revisions are set by DRC in its sole discretion. The fees are due and payable upon receipt of the update or revision. DRC will

notify User at least 30 days in advance of the anniversary date of any change in fees for the following year.

5.3 Unpaid Fees. Any fees remaining unpaid more than 30 days after the date they are due shall be subject to an interest charge of 1 percent per month until paid.

6. DELIVERY

DRC shall deliver the Product to User pursuant to the following conditions:

- (a) DRC shall package, ship and deliver the Product to the User at the address specified in the agreement or a designated alternate address.
- (b) DRC shall not assume any liability for shipment of the Product.
- (c) The carrier shall not be considered an agent of DRC.
- (d) DRC shall choose the method of delivery in the absence of prior shipping instructions.
- (e) Dates specified for delivery of the Product shall be postponed automatically if DRC is prevented from

meeting those dates by any causes beyond its reasonable control.

7. LIMITED WARRANTY

7.1 Limited Warranty.

- (a) Metro's RLIS data is collected from the region's 24 cities and three counties for general planning purposes and Metro therefore does not warrant the accuracy of data originated by these jurisdictions. Metro has collected and is maintaining these data to meet the accuracy requirements of a broad-scale land information system. Therefore, the level of accuracy is deemed adequate for regional planning purposes. Metro and PGE shall include a disclaimer to that effect in any copies of any portion of RLIS data transferred, sold or used by third parties.
- (b) DRC shall use its best efforts to ensure that the Product is delivered free of physical defect.
- (c) DRC shall have the sole authority to determine whether the Product, at the time of delivery, was free of physical defect.

(d) DRC disclaims any other warranties, express or implied, respecting this agreement or the Product.

7.2 Remedy.

(a) User's sole and exclusive remedy for breach of this limited warranty will be to return the Product within 60 days of receipt.

(b) DRC shall, at its discretion, retain the returned Product and refund the fee for the license, or replace the Product, or repair the Product and return it to the User.

8. ASSIGNMENT AND TRANSFER

User shall not disclose, lease, sell, distribute, make, transfer or assign the Product or engage in any other transaction which has the effect of transferring the right of use or part of the Product without prior written consent of DRC.

9. LIABILITY

DRC shall not be liable for any activity involving the Product with respect to the following:

- (a) Lost profits, lost savings or any other consequential damages.
- (b) The fitness of the Product for a particular purpose.
- (c) The installation of the Product, its use or the results obtained.

10. TERMINATION

10.1 User Rights. Upon the expiration or revocation of this license, the rights of the User shall cease.

10.2 Return of the Product and Copies. The Product and any copies of the Product shall be returned to DRC within 30 days from the date this license expires or is revoked.

11. MISCELLANEOUS

11.1 Applicable Law: Venue. This license shall be construed and interpreted under and pursuant to the laws of the state of Oregon. The parties agree that venue for any action or claim arising out of or in connection with this license shall be in the Superior Court for Multnomah County, Oregon.

11.2 Invalidity. If any term or provision of this license or the application thereof to any person or circumstance shall to

any extent be invalid or unenforceable, the remainder of this license shall not be affected thereby, and each term and provision of this license shall be valid and enforced as written to the fullest extent permitted by law.

11.3 Entire Agreement. This license contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise made by any party hereto, which is not contained herein, shall be binding or valid.

11.4 Authority. Persons whose signatures appear as "User" on the reverse represent that they are authorized to do so and represent and warrant that this licensing agreement is a legal, valid and binding obligation and is enforceable in accordance with its terms.

RCB:lmk:mk

PROD1213.AGR

12-15-89

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 90-1196 FOR THE PURPOSE OF APPROVING A SOLE SOURCE CONTRACT WITH PORTLAND GENERAL ELECTRIC (PGE) FOR EXCHANGE OF DIGITAL DATA

Date: December 13, 1989

Presented by: Dick Bolen

PROPOSED ACTION

Adoption of this resolution endorses a data exchange agreement whereby Metro gains access to PGE's digital land parcel maps for inclusion in the Regional Land Information System (RLIS), on the condition that RLIS data, to be added as layers onto the PGE base maps, will be available at no charge to PGE for internal company purposes for the four-year duration of the contract. In addition, it endorses certain user restrictions, third party licensing capabilities, and provision for return of licensing royalties. Metro agrees to return to PGE at least \$25,000 in royalties over the four-year life of this agreement. If the full amount has not been returned by that time, the remaining amount may be used toward products and services.

FACTUAL BACKGROUND AND ANALYSIS

This agreement provides significant benefits for the development of RLIS, making available digital maps to serve as the base layer for building the RLIS system. PGE estimates that one million dollars have been invested to date in development and maintenance of these computer maps. Gaining access to this considerable asset saves money and time.

The negotiations with PGE produced an agreement with two major ingredients:

- . the mutual exchange of equally valued digital data products for internal company use by PGE and for internal use by Metro and its dues-paying member jurisdictions; and
- . the sale of digital data products (license) to third parties.

The exchange of data between Metro and PGE is a straight trade of data determined to be of equal value. After four years, PGE will pay for RLIS products and services.

The sale of data to third parties by Metro or PGE is subject to the user agreement requirements of this contract (page 5). A data licensing agreement to be used for such sales is attached as part of the exhibit.

Metro controls product unit pricing by guaranteeing \$25,000 in royalties to PGE over four years, but with no stipulation regarding what Metro will charge for PGE data elements included in RLIS products. We felt this important to allow flexibility in developing a realistic pricing structure. RLIS products will be entirely new and unique products and no comparable data products exist as guides to pricing. Therefore, if PGE were to establish a price for their map layer as part of this agreement that later proved to be unrealistically high, the sale of Metro's RLIS layers would be restricted, being virtually inseparable from the PGE base map layer. Therefore, this agreement ensures that PGE will not price RLIS products out of the market while assuring PGE of a return in royalties of no less than \$25,000. In the event that Metro is not able to return \$25,000 in four years, it has the option of returning the remainder due in the form of credit for products and services.

In conclusion, this agreement is of significant benefit to Metro's RLIS project. It does not encumber Metro's ability to develop a cost-recovery pricing system using authority granted by the 1989 Legislature in Senate Bill 207-A. It initiates a mutually beneficial public/private partnership with PGE.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 90-1196.



GRANT/CONTRACT SUMMARY

METROPOLITAN SERVICE DISTRICT

GRANT/CONTRACT NO. _____

BUDGET CODE NO. 140 121100 524190 42460

FUND: PLANNING DEPARTMENT: TRANS

(IF MORE THAN ONE) _____

SOURCE CODE (IF REVENUE) _____

INSTRUCTIONS

- OBTAIN GRANT/CONTRACT NUMBER FROM CONTRACTS MANAGER. CONTRACT NUMBER SHOULD APPEAR ON THE SUMMARY FORM AND ALL COPIES OF THE CONTRACT.
- COMPLETE SUMMARY FORM.
- IF CONTRACT IS —
 - SOLE SOURCE, ATTACH MEMO DETAILING JUSTIFICATION.
 - UNDER \$2,500, ATTACH MEMO DETAILING NEED FOR CONTRACT AND CONTRACTOR'S CAPABILITIES, BIDS, ETC.
 - OVER \$2,500, ATTACH QUOTES, EVAL. FORM, NOTIFICATION OF REJECTION, ETC.
 - OVER \$50,000, ATTACH AGENDA MANAGEMENT SUMMARY FROM COUNCIL PACKET, BIDS, RFP, ETC.
- PROVIDE PACKET TO CONTRACTS MANAGER FOR PROCESSING.

1. PURPOSE OF GRANT/CONTRACT Exchange of digital data, establishes use restrictions + permits limited third party licensing agreement

2. TYPE OF EXPENSE
- | | | |
|---|---|---------------------------------------|
| <input type="checkbox"/> PERSONAL SERVICES | <input type="checkbox"/> LABOR AND MATERIALS | <input type="checkbox"/> PROCUREMENT |
| <input type="checkbox"/> PASS THROUGH AGREEMENT | <input type="checkbox"/> INTER-GOVERNMENTAL AGREEMENT | <input type="checkbox"/> CONSTRUCTION |
| | | <input type="checkbox"/> OTHER |

OR

TYPE OF REVENUE GRANT CONTRACT OTHER

3. TYPE OF ACTION
- | | |
|---|--|
| <input type="checkbox"/> CHANGE IN COST | <input type="checkbox"/> CHANGE IN WORK SCOPE |
| <input type="checkbox"/> CHANGE IN TIMING | <input checked="" type="checkbox"/> NEW CONTRACT |

4. PARTIES PSE / METRO

5. EFFECTIVE DATE 1/11/90

TERMINATION DATE 1/10/94
(THIS IS A CHANGE FROM _____)

6. EXTENT OF TOTAL COMMITMENT:

ORIGINAL/NEW	<u>pass thru royalties (4yr)</u>	\$ <u>25000.00</u>
PREV. AMEND		
THIS AMEND		

TOTAL \$ 25000.00

7. BUDGET INFORMATION

A. AMOUNT OF GRANT/CONTRACT TO BE SPENT IN FISCAL YEAR 1988 \$ _____

B. BUDGET LINE ITEM NAME Pass thru Contract AMOUNT APPROPRIATED FOR CONTRACT \$ _____

C. ESTIMATED TOTAL LINE ITEM APPROPRIATION REMAINING AS OF _____, 19 \$ _____

8. SUMMARY OF BIDS OR QUOTES (PLEASE INDICATE IF A MINORITY BUSINESS ENTERPRISE)

_____ SUBMITTED BY	\$ _____	<input type="checkbox"/> MBE
	AMOUNT	
_____ SUBMITTED BY	\$ _____	<input type="checkbox"/> MBE
	AMOUNT	
_____ SUBMITTED BY	\$ _____	<input type="checkbox"/> MBE
	AMOUNT	

9. NUMBER AND LOCATION OF ORIGINALS _____

10. A. APPROVED BY STATE/FEDERAL AGENCIES? YES NO NOT APPLICABLE
 B. IS THIS A DOT/UMTA/FHWA ASSISTED CONTRACT YES NO
11. IS CONTRACT OR SUBCONTRACT WITH A MINORITY BUSINESS? YES NO
 IF YES, WHICH JURISDICTION HAS AWARDED CERTIFICATION _____
12. WILL INSURANCE CERTIFICATE BE REQUIRED? YES NO
13. WERE BID AND PERFORMANCE BONDS SUBMITTED? YES NOT APPLICABLE
 TYPE OF BOND _____ AMOUNT \$ _____
 TYPE OF BOND _____ AMOUNT \$ _____
14. LIST OF KNOWN SUBCONTRACTORS (IF APPLICABLE)
- | | | |
|------------|---------------|------------------------------|
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
15. IF THE CONTRACT IS OVER \$10,000
 A. IS THE CONTRACTOR DOMICILED IN OR REGISTERED TO DO BUSINESS IN THE STATE OF OREGON?
 YES NO
 B. IF NO, HAS AN APPLICATION FOR FINAL PAYMENT RELEASE BEEN FORWARDED TO THE CONTRACTOR?
 YES DATE _____ INITIAL _____
16. COMMENTS:

GRANT/CONTRACT APPROVAL

INTERNAL REVIEW <u><i>A. Roberts</i></u> DEPARTMENT HEAD	CONTRACT REVIEW BOARD (IF REQUIRED) DATE _____ 1. _____ COUNCILOR 2. _____ COUNCILOR 3. _____ COUNCILOR	COUNCIL REVIEW (IF REQUIRED) _____ DATE
FISCAL REVIEW <u><i>Heather Mann</i></u> BUDGET REVIEW <u>12/13/89</u>		

LEGAL COUNSEL REVIEW AS NEEDED:

A. DEVIATION TO CONTRACT FORM *Langehew*

B. CONTRACTS OVER \$10,000 _____

C. CONTRACTS BETWEEN GOVERNMENT AGENCIES _____

INTERGOVERNMENTAL RELATIONS COMMITTEE REPORT

RESOLUTION NO. 90-1196, FOR THE PURPOSE OF APPROVING A SOLE SOURCE CONTRACT WITH PORTLAND GENERAL ELECTRIC (PGE) FOR EXCHANGE OF DIGITAL DATA

Date: December 28, 1989

Presented By: Councilor Gardner

COMMITTEE RECOMMENDATION: At the December 21, 1989, Intergovernmental Relations Committee meeting, all members were present and voted unanimously to recommend the Council adopt Resolution No. 90-1196 as amended. The amendments were technical corrections to the agreement, copies of which were handed out to the Committee at the meeting.

COMMITTEE DISCUSSION/ISSUES: Presented by the Transportation Department Data Services Division, Resolution No. 90-1196 approves an agreement with PGE to exchange Regional Land Information System (RLIS) map data. For over one year, PGE and the Data Services Division have discussed the project which involves Metro receiving PGE's digital land parcel maps, which will form Metro's base RLIS information, and in turn making RLIS data layers built on the base maps available to PGE at no charge for four years. After the four-year contract period, PGE would have to purchase Metro's RLIS maps and information like any other business. Metro Transportation staff stressed the exchange is invaluable to Metro because the RLIS base map effort alone would have cost over \$1 million and taken years to complete. Staff noted additional beneficial aspects of the agreement:

- o Metro controls product pricing by guaranteeing \$25,000 in royalties to PGE over four years, but with no restrictions on Metro's pricing for PGE data elements contained in RLIS products;
- o Third party RLIS product sales, by Metro or PGE, are protected by a data licensing agreement and user agreement.

The Committee discussed copyright protection issues and the need to ensure that PGE cannot seek residual royalties because local jurisdictions reproduce RLIS maps and information. It was noted the agreement does not restrict hard copy reproductions and the royalties apply to digital copies only. The Committee reviewed public domain responsibilities which require a jurisdiction, if it is the "jurisdiction of origination", to provide information at reproduction cost only. Metro legal authority to charge full costs (development and reproduction) for RLIS products is under Senate Bill 207 adopted the last Oregon legislative session. The basis for SB207 is that nearly all of the RLIS base information is not Metro's public domain responsibility to provide. On a general note, the Committee discussed long-term RLIS costs, such as data maintenance and updates. Data Services staff pointed out the User Agreement calls upon local jurisdictions to provide data updates. The overall project goal is to have local jurisdictions maintain their respective data and provide regular updates, with Metro incorporating the data into RLIS and providing complete region-wide information.

jpmthree b:\901106.cr



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

December 13, 1989

Mr. Tom Allender, Supervisor
Mapping Services
Portland General Electric
121 SW Salmon Street
Portland, Oregon 97204

Dear Mr. Allender:

Following is a proposed data exchange agreement between the Metropolitan Service District (Metro) and Portland General Electric (PGE) similar to your agreement with the City of Portland but adding the increased confidentiality from SB 207-A, effective October 2, 1989.

Scope

This agreement provides for exchanges of digital data between PGE and Metro, establishes use restrictions, and permits limited third-party licensing agreements.

PGE will provide certain digital land base data required by Metro in computer-readable format for the purpose of RLIS planning and database expansion applications by Metro and its jurisdiction members in exchange for access to or copies of Metro's digital RLIS database.

PGE Digital Land Base Data Description

PGE has computer graphic data in Intergraph format files containing 512 byte blocks of data. Graphic data elements contained in these files illustrate land features such as streets, tax lot lines, rivers, and streams, which are geographically controlled to the Northern Oregon State Plane Coordinate System and stored on 1-57 data levels within the land base file.

PGE Obligation

The following levels of graphic data will be extracted from the PGE digital land base files and placed in specific Metro files (ASCII format):

Executive Officer
Rena Cusma

Metro Council

Mike Ragsdale
Presiding Officer
District 1

Gary Hansen
Deputy Presiding
Officer
District 12

Lawrence Bauer
District 2

Jim Gardner
District 3

Richard Devlin
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Judy Wyers
District 8

Tanya Collier
District 9

Roger Buchanan
District 10

David Knowles
District 11

PGE Land File

<u>Level</u>	<u>Description</u>
1	Streets (lines, curves, and cul-de-sacs)
2	Street Names
3	Street Names (switch map)
9	PGE Properties
11	Lot Lines
12	Lot Numbers
13	Subdivision Names
16	Section Boundaries
17	Section Labels
18	Section Corners
21	Buildings
22	Building Names
26	City Boundaries
27	City Boundary Labels
31	Railroads
32	Railroad Names
33	Railroad Names (switch map)
36	County Boundaries
37	County Boundary Labels
41	Streams and Creeks
42	Rivers and Lakes
43	Water Names
44	Water Names (switch map)
46	Township Boundaries
47	Township Boundary Labels
48	Township Boundary Labels (switch map)
51	Miscellaneous Land Features and Names
52	Rights-of-way
56	Division Boundaries
57	Division Boundary Names

Metro Obligation

The data to be transferred from Metro's Regional Land Information System (RLIS) to PGE include the following:

- PGE's land base quarter-section maps edited to be consistent with the most current county assessor maps available to Metro at the time editing is conducted
- Tax lot numbers linked to parcel polygons

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- County tax assessor data files correlated to tax lot number system and including items such as ownership, value, tax rate and property use code
- Land use zoning classification
- Comprehensive plan classification
- Development constraints (e.g., flood plain or steep slopes)
- Infrastructure availability (e.g., sewer and water)
- Transportation system
- Parks and open space
- Political boundaries (e.g., city, special service district, or taxing district)
- U.S. Census Bureau data

Data Transfer Media

PGE will deliver data to Metro within thirty (30) days from date of request.

The data will be delivered by each party on nine-track, 1,600 bpi-density magnetic tape.

Data Delivery Time Schedule

Metro intends to develop its RLIS database according to the production schedule attached as "Exhibit A." This preliminary schedule may change without prior agreement by PGE, subject to member government assistance and Metro monies available for certain contractual services. Therefore, "Exhibit A" will be revised by Metro as the availability of additional developmental resources becomes known.

Terms and Conditions

This agreement is subject to the following terms and conditions:

1. Consideration

Metro agrees to make available to PGE copies of Metro's digital RLIS database as consideration for use of the

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PGE digital land base data. For up to four years, as revisions and updates to the database occur, Metro will provide such revisions to PGE with the same distribution schedule and conditions established with its dues-paying jurisdictions. The cost of annual RLIS revisions and updates shall be waived until such time as the PGE land base file no longer serves as the primary mapping base for RLIS or four (4) years from the date of this agreement, whichever comes first. This may be extended by written agreement of the parties if Metro editing has not substantially upgraded the original PGE file.

After four years from the date of this agreement, Metro agrees to make available to PGE copies of revisions and updates to the RLIS database with the same distribution schedules established with dues-paying jurisdictions, so long as such revisions and updates are made available to non dues-paying entities. PGE shall pay for RLIS revisions and updates based on Metro's actual costs only, as determined by Metro's cost recovery model.

Any costs incurred by either party necessary to accomplish the transfer of data are part of the consideration for the exchange of data products described in this agreement, and will not be charged to the other party.

3. Use Restrictions and License Fees

PGE has unrestricted use of RLIS data for internal company functions or that of its subsidiaries. If PGE transfers or sells the RLIS data or products created using RLIS data in any form to any parties outside the company, Metro shall provide and PGE shall require the use restrictions and any user license fee on the form of user license agreement used by Metro at the time of transfer for Metro sales of comparable RLIS data or products.

Metro may not transfer or sell the PGE data files received by Metro in digital form to any party outside of Metro's organization or its governmental membership structure without the express approval of PGE. This approval will include use restrictions and a user license fee paid to PGE.

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Metro transfers or sales of the RLIS data in digital form containing the data received from PGE to parties other than dues-paying governments, shall include the use restrictions and user agreement attached as "Exhibit B" as an express condition of such sale or transfer. Metro shall retain any license fees from such RLIS sales or transfers, except that PGE shall receive up to \$25,000 for its license fees from such resales of RLIS data that may occur within four years of the execution of this Agreement. If PGE has received less than \$25,000 in license fees at the end of the four years, the difference between \$25,000 and the amount received by PGE shall be credited toward fees for Metro products and services at the published rates from that time forward.

4. Acceptance, Testing, and Date of Acceptance

After delivery of data, the recipient shall perform acceptance testing for 10 days. The recipient may accept or reject the data during this testing period. Causes for rejection shall be limited to the inability to transfer data from host computer to nine-track media, resulting in files inadequate for downloading and reconstruction into a useful digital product and/or substantial and consistent inaccuracy and misinterpretation of information in the database. Notwithstanding the foregoing, the provider shall have the right to correct within a reasonable time any data problems identified in writing by recipient within this testing period that would inhibit the transfer of data. The date of acceptance is the day the recipient notifies the provider in writing that the data is acceptable. If the recipient fails to provide the provider with written notice of rejection within the stated testing period, the data shall be deemed acceptable by the recipient the 10th day after delivery. Any dispute involving delivery, testing, acceptance or rejection of data shall be settled by arbitration under ORS 33.210 et seq.

5. Warranties

Metro and PGE each warrant that their respective data does not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. Should either Metro or PGE breach this warranty, each agrees to indemnify the other for, and hold the other harmless and defend the other from,

Mr. Tom Allender
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Page 6

any infringement or violation. If Metro or PGE is prevented from using the other party's data because of losses or cost arising out of such infringement or violation, the party supplying the data shall, at its discretion and at no cost to the other party, use best efforts to produce the right to continue using the data or replace or modify data to make it non-infringing. If such efforts fail to achieve the stated goal, both parties shall accept the return of their own data.

Metro and PGE shall include a written disclaimer of warranties as to accuracy of data in every sale of license to use by third parties.

Parties shall use their best efforts to ensure that the product is delivered free of defect.

Data described in this agreement will be delivered as is. In no event shall either Metro or PGE be liable for consequential damages, even if Metro or PGE has been advised of the possibility of such damages.

6. Confidentiality

Metro and PGE mutually agree to keep in confidence any and all source material and data exchanged pursuant to this agreement to the full extent allowed by law unless either Metro or PGE state in writing that portions of particular source material and data are not of a proprietary nature.

Pursuant to 1989 Oregon Laws, Chapter 476, Metro shall incorporate PGE data into its geographic database and claim full exemption from the public disclosure requirements of ORS 192.502.

Further, each party agrees to disclose source material and data delivered by the other party only to their respective personnel to whom knowledge of this source material or data is required for the proper performance of their regular job and to cause such personnel to hold said source material and data in confidence.

It is understood that Metro will combine data from a variety of other sources to enhance the source material and data delivered by PGE, creating its RLIS database. Metro has the right to distribute digital copies of the RLIS database to Metro dues-paying member jurisdictions and other third parties, subject to the recipient's

execution of Metro's licensing agreement protecting RLIS confidentiality.

7. Indemnity

Each party hereby agrees to defend, indemnify, and hold harmless the other from and against all liability, losses, costs, and expenses (including reasonable attorney fees at trial and on appeal) which the other may incur by reason of the fault or negligence of a party, its employees, or authorized representatives in conjunction with or arising out of the performance or nonperformance of the party's obligation under this agreement.

8. Waiver

None of the provisions of this agreement shall be considered waived by PGE or Metro unless such waiver is given in writing by either party. No such waiver shall be a waiver of any past or future default of any of the provisions of this agreement unless expressly stipulated in such waiver.

9. Assignability

Neither party shall have the right to assign or otherwise transfer this agreement or the party's rights hereunder except with the written consent of the other party, except that a successor, in interest of the entire or a significant portion of the business of a party, shall acquire all of the interests of the party.

10. Severability

If any portion of this agreement shall be held invalid or inoperative, the remainder of this agreement shall be considered valid and operative and effect shall be given to the intent manifested by the portion held invalid or inoperative.

11. Attorney Fees

If either party institutes suit or action to enforce or interpret this Agreement, or any documents or matter referred to in this Agreement, the prevailing party shall be entitled to recover from the other party all costs and disbursements incurred in connection therewith, including, but not limited to, attorney fees at trial and on appeal.

Mr. Tom Allender
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12. Governing Laws

This agreement shall be governed by the laws of the State of Oregon.

To accept this proposal, please initial each page, authorize with your signature and return the original to Metro. This proposal is good for thirty (30) days from the date of this document. Thank you for consideration of this proposal.

Sincerely,

Richard Bolen
Data Resource Center Manager

PORTLAND GENERAL ELECTRIC COMPANY

C.G. Anderson, Vice President
Customer Relations

METROPOLITAN SERVICE DISTRICT

Richard Engstrom
Deputy Executive Officer

EXHIBIT A

This exhibit addresses the time frame required for RLIS development.

PRODUCTION TIME REQUIREMENTS

<u>Map Data Layer</u>	<u>Time Required</u>
Parcel Base Map	15.0 months
Tax Assessor Data/Land Use	1.5 months
Vacant Land	1.6 months
Zoning	2.8 months
Comprehensive Plans	1.6 months
Flood Plains	.4 months
Sewer and Water	.5 months
Parks and Open Space	.3 months
Transportation	.5 months
Boundaries	1.4 months
Collection of Source Materials	<u>1.0 months</u>
Total	26.5 months

PRODUCT LICENSING AGREEMENT
TERMS AND CONDITIONS

THIS AGREEMENT is a license and is made and entered into by and between METRO, acting by and through the Data Resource Center (hereinafter referred to as "DRC"), and the client identified on the reverse (hereinafter referred to as "User").

WHEREAS, DRC is the designer and developer of the copyrighted product(s) specified in the agreement (hereinafter referred to as "Product") with the right to license and distribute the Product; and

WHEREAS, the User is an individual, an organization, a corporation, a government entity or a member of a joint venture who will make use of the Product in its business activity; and

WHEREAS, the User desires a license to use the Product and the DRC desires to grant such a license to the User for the sole purpose of permitting the User to use the Product in its business activity and for no other purpose whatsoever;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions set forth herein, the parties hereto agree as follows:

1. PRODUCT

1.1 Licensed Product(s). This license applies to the Product(s) as listed on the reverse side hereof.

1.2 Grant of License. For and in consideration of the User's covenant to make payments under Section 5 and the performance of the other covenants and obligations of the User hereunder, the DRC hereby conveys to the User a nonexclusive license to use the Product.

2. USE

2.1 Permitted Use. This license is granted for the sole purpose of permitting the User to use the Product in its business activity and for no other purpose whatsoever.

2.2 Restrictions on Use.

(a) Unauthorized Use. User shall not allow access to Product by any other person or organization by means of networks, timesharing, or multiple CPU arrangements, unless authorized in writing by DRC.

(b) Copies. User shall not duplicate the Product except for the following:

1. User may make one copy of the Product for protection purposes as long as the User agrees not to use the backup copy for any purpose other than to replace original data if lost or damaged.

2. User may translate the Product into other formats and/or media. These "reformats" shall be subject to the same restrictions as the Product under this agreement.

2.3 Reserved Rights. DRC shall retain all rights, title and interest in the Product, including the right to license the Products covered by this license to other users.

The confidentiality of the source material and data delivered by DRC shall be maintained by User to protect both the interests of DRC and PGE's interest in its data incorporated into the RLIS database. For users subject to Public Records Laws, this shall include claiming full exemption from public disclosure available in cases specifically including applicable exemptions in ORS 192.502.

3. MAINTENANCE OF DIGITAL DATA

3.1 Annual Update. DRC intends to supply a data update service for digital data for an additional fee. The service is anticipated to consist of one annual update of licensed digital data

unless otherwise specified. DRC updates will be provided in its then current format.

4. TERM

4.1 The term of this agreement shall not be restricted as to time, except as set forth in 4.2 below. The agreement shall commence on the date the agreement is executed and continue so long as the product is in the possession of the User.

4.2 The term of the license shall expire at such time as the User discontinues use of the Product or the User fails to comply with any of the terms and conditions provided herein at which time the license shall be revoked. The license shall be revoked by DRC giving written notice of such revocation to the User. Upon receipt of the revocation , the User shall return all copies of the licensed product.

5. PAYMENT

5.1 Time for Payment. Initial payment of fees shall be made at the time the license is granted or as set forth in 5.2 or 5.3.

5.2 Annual Updates and Revisions. The fees for updates and revisions are set by DRC in its sole discretion. The fees are due and payable upon receipt of the update or revision. DRC will

notify User at least 30 days in advance of the anniversary date of any change in fees for the following year.

5.3 Unpaid Fees. Any fees remaining unpaid more than 30 days after the date they are due shall be subject to an interest charge of 1 percent per month until paid.

6. DELIVERY

DRC shall deliver the Product to User pursuant to the following conditions:

- (a) DRC shall package, ship and deliver the Product to the User at the address specified in the agreement or a designated alternate address.
- (b) DRC shall not assume any liability for shipment of the Product.
- (c) The carrier shall not be considered an agent of DRC.
- (d) DRC shall choose the method of delivery in the absence of prior shipping instructions.
- (e) Dates specified for delivery of the Product shall be postponed automatically if DRC is prevented from

meeting those dates by any causes beyond its reasonable control.

7. LIMITED WARRANTY

7.1 Limited Warranty.

(a) Metro's RLIS data is collected from the region's 24 cities and three counties for general planning purposes and Metro therefore does not warrant the accuracy of data originated by these jurisdictions. Metro has collected and is maintaining these data to meet the accuracy requirements of a broad-scale land information system. Therefore, the level of accuracy is deemed adequate for regional planning purposes. Metro and PGE shall include a disclaimer to that effect in any copies of any portion of RLIS data transferred, sold or used by third parties.

(b) DRC shall use its best efforts to ensure that the Product is delivered free of physical defect.

(c) DRC shall have the sole authority to determine whether the Product, at the time of delivery, was free of physical defect.

(d) DRC disclaims any other warranties, express or implied, respecting this agreement or the Product.

7.2 Remedy.

(a) User's sole and exclusive remedy for breach of this limited warranty will be to return the Product within 60 days of receipt.

(b) DRC shall, at its discretion, retain the returned Product and refund the fee for the license, or replace the Product, or repair the Product and return it to the User.

8. ASSIGNMENT AND TRANSFER

User shall not disclose, lease, sell, distribute, make, transfer or assign the Product or engage in any other transaction which has the effect of transferring the right of use or part of the Product without prior written consent of DRC.

9. LIABILITY

DRC shall not be liable for any activity involving the Product with respect to the following:

- (a) Lost profits, lost savings or any other consequential damages.
- (b) The fitness of the Product for a particular purpose.
- (c) The installation of the Product, its use or the results obtained.

10. TERMINATION

10.1 User Rights. Upon the expiration or revocation of this license, the rights of the User shall cease.

10.2 Return of the Product and Copies. The Product and any copies of the Product shall be returned to DRC within 30 days from the date this license expires or is revoked.

11. MISCELLANEOUS

11.1 Applicable Law: Venue. This license shall be construed and interpreted under and pursuant to the laws of the state of Oregon. The parties agree that venue for any action or claim arising out of or in connection with this license shall be in the Superior Court for Multnomah County, Oregon.

11.2 Invalidity. If any term or provision of this license or the application thereof to any person or circumstance shall to

any extent be invalid or unenforceable, the remainder of this license shall not be affected thereby, and each term and provision of this license shall be valid and enforced as written to the fullest extent permitted by law.

11.3 Entire Agreement. This license contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise made by any party hereto, which is not contained herein, shall be binding or valid.

11.4 Authority. Persons whose signatures appear as "User" on the reverse represent that they are authorized to do so and represent and warrant that this licensing agreement is a legal, valid and binding obligation and is enforceable in accordance with its terms.

RCB: lmk:mk

PROD1213.AGR

12-15-89