

**INTERGOVERNMENTAL AGREEMENT  
FOR CONSTRUCTION OF THE ELK ROCK BYPASS SEWER PROJECT**

County No. \_\_\_\_\_

City No. \_\_\_\_\_

School District No. \_\_\_\_\_

This agreement is entered into pursuant to ORS 190 between the Riverdale School District No. 51J, a political subdivision of the State of Oregon (hereinafter called "the School"), the City of Portland, a municipal corporation (hereinafter called "the City"), and Dunthorpe-Riverdale Service District No. 1, an ORS Chapter 451 Service District primarily located in Multnomah County (hereinafter called "the Service District"), collectively referred to as "the Parties" or individually as a "Party", for the purposes set forth herein below.

**PURPOSES:**

- a. The first purpose of this Agreement is to provide for the construction and installation of a sewer system and appurtenances as more particularly set forth in the attached Plans that are seven (7) pages in length and are collectively entitled the: "ELK ROCK BYPASS PROJECT; BES PROJECT #8378" identified as **EXHIBIT A**, hereby incorporated by this reference and hereinafter referred to as "the Sewer Project". The Sewer Project consists of the construction and installation of approximately 500 feet of buried 8 inch sewer pipe within the area described as "Parcel 1" on Exhibit A of the Sanitary Sewer Easement Agreement of even date herewith between School, as grantor, and the District, as grantee, which Sewer Project is more particularly described and shown in the Plans attached as Exhibit A to this Agreement..
- b. The second purpose of this Agreement is to establish the Parties' individual roles and obligations with respect to the Sewer Project.

**RECITALS:**

1. The City and the Service District entered into an Intergovernmental Agreement in 2006 (County Contract No 4600006391, approved by City Ordinance 180597, hereinafter the "District/City IGA") that provides for the City to undertake certain functions regarding any construction work on behalf of the Service District. Section II, Sub-section B, of the District/City IGA addresses engineering services the City is to provide the Service District. The purpose of this Agreement is to modify those provisions with respect to the Sewer Project.
2. Notwithstanding the cited provisions of the District/City IGA, the Parties find that it is in the best public interest in this instance to authorize the School to manage the Sewer Project using the School's contracted resources that are currently undertaking the construction of the new the Riverdale Grade School Construction Project (the "School Project"). The School has contracted with Bremik Construction, Inc. ("Bremik") for the construction of the School Project. The Sewer Project is within the general scope of the School's original procurement for the School Project, and because of schedule constraints and related coordination issues, it is necessary for the School to incorporate, by change order, the Sewer Project into its contract with Bremik. The Parties agree that Bremik is qualified to perform the Sewer Project work.

3. The Sewer Project has been identified in the Service District's 20-year Sanitary Systems Facility Plan, and the Service District and City have secured the necessary Project funding in their current budgets.
4. The Sewer Project budget estimate as of December 23, 2009 is \$205,000.
5. The City is the regulatory and permitting governing body with jurisdiction over the Sewer Project now that it will be built by the School, pursuant to that certain Intergovernmental Agreement to Transfer Land Use and Planning Responsibilities between the City of Portland and Multnomah County, as set forth in City Ordinance No. 51712, dated January 15, 2002 ("City/County IGA").
6. The Consolidated Special Provisions for the Sewer Project are set forth in the attached **Exhibit B**, hereby incorporated by this reference and hereinafter referred to as "the Special Provisions".
7. The attached Exhibits A and B are final and not to be revised, amended, deleted or in any way altered without the written consent of the Parties, obtained through the signature of the designated Party representative as provided herein.
8. Payments from the Service District to the School shall be considered delinquent if not paid within 20 days of the date invoiced. Payments between the Service District and City shall be considered delinquent if not paid within 60 days of the date billed. Provided there is no reasonable basis to withhold payment as otherwise provided herein, delinquent payments shall be subject to simple interest charges calculated from the date due to the date payment is received at the rate of one and one-half (1.5%) percent per month.

**The Parties agree as follows:**

1. **TERM.** The term of this agreement shall be from the date that all required signatures have been obtained to the completion of the Sewer Project, and final payment.
2. **RECITALS ARE INCORPORATED.** The above Recitals are contractual and incorporated by this reference.
3. **CITY AND SERVICE DISTRICT CONSENT; SCHOOL'S ACCEPTANCE.**  
Notwithstanding the provisions of the District/City IGA as discussed in the Recitals, the City and the Service District, subject to the terms and conditions set forth in this Agreement, hereby expressly authorize the School to manage the public construction contract for the Sewer Project, and the School accepts and agrees to do same.
4. **RESPONSIBILITIES OF THE SCHOOL.** The School agrees to provide the following services:
  - a. The School will manage the Sewer Project in compliance with all federal, state and local laws and regulations and in compliance with terms and conditions of this Agreement and the plans and specifications set forth in Exhibits A and B. As part of its change order with Bremik, the School and Bremik will agree that the City is an intended third-party beneficiary of that change order and that Bremik's performance will be rendered directly to the City and for the City's express benefit. Further, the change

order between the School and Bremik will provide that any reference to "Owner," "Owner's Representative" or "Engineer" in the Special Provisions or the City of Portland Standard Construction Specifications will be a reference to the City or its designated representative.

- b. Special Provisions Part 00100 (General Provisions Sections 00110 to 00199) of Exhibit B are hereby waived. All others sections of the Special Provisions are applicable to the Sewer Project, and the School shall ensure that its change order with the Bremik for the Sewer Project incorporates such Special Provisions. Other than the obligation to incorporate the Special Provisions in its change order with Bremik, the School shall have no obligations under the Special Provisions or the City of Portland Standard Construction Specifications and under no circumstances shall the term "Contractor," as that term is used in the Special Provisions or the City of Portland Standard Construction Specifications, be construed to mean the School.
- c. The School's Sewer Project Manager shall be:  
Name: Terry Hoagland, Riverdale School Superintendent  
Address: 9727 SW Terwilliger Rd, Portland OR 97219-8409  
Phone: (503) 636-8611; E-mail: [thoagland@riverdale.k12.or.us](mailto:thoagland@riverdale.k12.or.us)
- d. The School's Sewer Project Manager and/or appropriate staff shall regularly meet with the City and the Service District during the construction stages of the Sewer Project and provide timely responses to the City's and the Service District's inquiries regarding the Sewer Project.
- e. The School or Bremik, as appropriate, shall contact Sun Noble, with the City (at phone number: 503-823-5241) for information regarding all permits related to the Sewer Project required by the City. The Service District shall insure that all necessary permits imposed by City code or regulations for the installation and construction of the Sewer Project are approved and ready to pick up at the counter, and upon notification that permits are ready to pick up, the School will be responsible for paying City fees and picking up the permits.. City fees imposed will be reimbursed as an approved cost of the Sewer Project.
- f. The School shall maintain electronic copies of all Sewer Project documents generated during the work, copies of which shall be provided to the Service District and City at the completion of the Sewer Project.
- g. The School's costs under this Agreement shall be billed monthly by direct invoice to the Service District accompanied by a schedule of values.

**5. RESPONSIBILITIES OF THE SERVICE DISTRICT.** The Service District agrees to provide the following services.

- a. Designate the Service District's Project Manager, who shall be:  
Name: Tom Hansell, Service District Manager  
Address: 1620 SE 190<sup>th</sup> Ave, Portland OR 97233  
Phone: (503) 988-5050; E-mail: [tom.j.hansell@co.multnomah.or.us](mailto:tom.j.hansell@co.multnomah.or.us)

- b. Meet regularly with the School during the construction stages of the Sewer Project.
- c. Timely respond to the School's Project Manager's inquiries regarding Sewer Project.
- d. Participate in all scheduled Sewer Project meeting(s).

e. The Service District shall place \$200,000 into Multnomah County's Local Government Investment Pool (LGIP) within 15 days after all signatures are obtained on this agreement. Service District shall pay the School by completing a pool transfer to the School's LGIP account within 10 days after receipt of a School's invoice as provided under Section 4 g, provided that the work described in the invoice has been completed in accordance with the terms and conditions of this Agreement. In the event of a dispute about whether some portion of the work described in an invoice has been completed in accordance with the terms and conditions of this Agreement, the Service District shall pay the School all undisputed amounts.

- f. The Service District shall bill City at the completion of the construction work for the City's share of all eligible costs, as defined under the terms of the District/City IGA.

**6. RESPONSIBILITIES OF THE CITY.** The City agrees to provide the following services:

- a. Designate the City Sewer Project Manager, who shall be:  
Name: Duane Peterson, Principal Financial Analyst  
Address: 1120 SW Fifth Ave, Room 1000, Portland OR 97204-1912  
Phone: (503) 823-7141; E-mail: [DUANE.PETERSON@portlandoregon.gov](mailto:DUANE.PETERSON@portlandoregon.gov).
- b. Issue all applicable permits to the School's contractor to construct the Sewer Project, and provide inspection and oversight as necessary, in accordance with the City's standard procedures.
- c. The City shall reimburse the Service District within 30 days of the receipt date of any Service District bill for costs eligible for reimbursement under District/City IGA.

**7. TERMINATION.** This Agreement may be terminated by any Party upon 60 days written notice to the other parties. Provided that obligations already incurred by the Parties through partial or complete performance of this Agreement at the time of early termination shall survive early termination.

**8. INDEMNIFICATION.**

- a. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the financial limits therein, the Service District shall indemnify, defend, and hold harmless the School and the City from and against all liability, loss, and costs arising out of or resulting from the acts of the Service District, its officers, employees, and agents in the performance of this Agreement, but only to the extent caused by the negligent acts or omissions of the Service District.

- b. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the financial limits therein, the School shall indemnify, defend, and hold harmless the Service District and the City from and against all liability, loss, and costs arising out of or resulting from the acts of School, its officers, employees, and agents in the performance of this Agreement, but only to the extent caused by the negligent acts or omissions of the School. For the purpose of this paragraph, the Parties agree that neither Bremik nor its subcontractors, consultants or suppliers at any tier are "agents" of the School.
- c. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the financial limits therein, the City shall indemnify, defend, and hold harmless the Service District and the School from and against all liability, loss, and costs arising out of or resulting from the acts of the City, its officers, employees, and agents in the performance of this Agreement, but only to the extent caused by the negligent acts or omissions of the City.

## 9. INSURANCE.

- a. Each party shall be responsible for providing workers' compensation insurance as required by law for its employees or volunteers. Neither party shall be required to provide or show proof of any other insurance coverage.
- b. The School shall require any contractor and any subcontractor for the Sewer Project to acquire prior to, and to maintain throughout the Sewer Project, insurance naming the City and the District as additional insureds with coverage and limits as follows:
  - 1. Automobile Liability Insurance for Contractor's/Subcontractor's activities: \$2,000,000 combined single limit for bodily injury and property damage per occurrence for Contractor's/Subcontractor's owned, non-owned, and hired vehicles.
  - 2. Workers Compensation and Employers Liability Insurance for activities. Oregon statutory coverage and limits for Workers Compensation Employers Liability insurance with limits not less than: \$1,000,000 for each accident-bodily injury by accident; \$1,000,000 each employee-bodily injury by disease; \$1,000,000 annual aggregate-bodily injury by disease.
  - 3. Commercial General Liability insurance for activities. The policy shall not contain exclusions for Blanket Contractual, Broad Form Property Damage, Personal Injury, Premises-Operations, Products-Completed Operations, Independent Contractors, Fire Legal Liability, and Explosion, Collapse, and Underground (XCU) property damage liability. Policy limits shall not be less than: \$2,000,000 combined single limit for bodily injury and property damage per occurrence.
  - 4. The insurance coverage obtained by the contractor shall name the City and the District and the officers, employees and agents of these parties as additional insureds, and shall not be terminated or canceled or materially reduced prior to

the completion of the Sewer Project without thirty (30) days written notice to the School, with a copy of such notice being sent to the District and the City. For purposes of computing time, the first day of the thirty days written notice shall begin on the day that the notice is actually received by the School. Prior to entry of any subcontractor onto the Sewer Project site, the contractor shall provide the School with a certificate of insurance in force evidencing insurance coverage of such subcontractor with limits and conditions as described herein. The School shall provide the City and the District with copies of the certificate of insurance, and shall provide both City and the District with copies of any notices received pursuant to this section

10. **ADHERENCE TO LAW.** Each Party shall comply with all federal, state, and local laws and ordinances applicable to this Agreement.
11. **NON-DISCRIMINATION.** Each Party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.
12. **ACCESS TO RECORDS.** Each Party shall have access to the books, documents, and other records of the other which are related to this Agreement for the purpose of examination, copying, and audit, unless otherwise limited by law.
13. **RELEASE AND ASSIGNMENT.** In consideration of the School's performance under this Agreement, effective upon Substantial Completion (as that term is defined in the 2007 edition of the City of Portland Standard Construction Specifications), the School shall assign to the Service District all claims, suits or actions it has or may have against any person or entity performing work on the Sewer Project to the extent that such claims arise out of the Sewer Project. In consideration for this assignment, effective upon Substantial Completion, the Service District and City shall fully and finally release, acquit and forever discharge the School and its employees, officers, insurers and successors and assigns of the foregoing from any and all claims arising out of or related to the Sewer Project.
14. **THIS IS THE ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties. This Agreement may be modified or amended only by the written agreement of the parties.
15. **ADDITIONAL TERMS AND CONDITIONS.** In the event the pricing received by the School exceeds by 10% or more above the estimated cost of the Sewer Project, the Parties agree to meet in a timely manner to resolve how to fund the additional cost or revise the Sewer Project to stay within budget. If a mutually acceptable resolution is not obtained, the Sewer Project will be cancelled, and this Agreement will be terminated.
16. **COUNTERPARTS EXECUTION.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. For the convenience of the Parties, the execution pages of any executed counterpart may be detached and reattached to any other executed counterpart to form one or more documents that are fully executed. This Agreement shall not be effective until all Parties have executed this Agreement or a counterpart of this Agreement..

**IT IS SO AGREED:****1. FOR RIVERDALE SCHOOL DISTRICT No. 51J, OREGON:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

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**2. FOR DUNTHORPE-RIVERDALE SERVICE DISTRICT NO. 1:**

By: \_\_\_\_\_

CHAIR OF BOARD OF COUNTY COMMISSIONERS FOR MULTNOMAH COUNTY, OREGON  
GOVERNING BODY FOR DUNTHORPE-RIVERDALE SANITARY SERVICE DISTRICT No. 1

## REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY

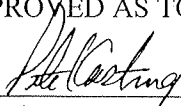
\_\_\_\_\_  
Matthew O. Ryan, Assistant County Attorney

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**3. FOR THE CITY OF PORTLAND:**

\_\_\_\_\_  
Dean Marriott  
Director, Bureau of Environmental Services

## APPROVED AS TO FORM:

By   
City Attorney

3/15/2010

RSD Sewer IGA - Final Revision, DCP#2, Ordinance version, 3-15-10.DOC