

EXHIBIT A
INTERGOVERNMENTAL AGREEMENT FOR THE CITY OF PORTLAND
TO PROVIDE STAFF SUPPORT SERVICES
TO THE REGIONAL WATER PROVIDERS CONSORTIUM

This Agreement is made by and between the City of Portland (hereinafter the "City") and the Regional Water Providers Consortium, acting by and through its Board (hereinafter the "Consortium").

A. PURPOSES

The public water planning and supply agencies in the Portland Metropolitan area have formed a Regional Water Providers Consortium through intergovernmental agreement. The purpose of this subsequent Agreement between the City of Portland (one of the Consortium members) and the Consortium is to assist in the implementation of the Consortium's Work Plan. Under the terms of this Agreement, the City of Portland will provide a range of staff support services to the Consortium and the Consortium will compensate the City for those services. This Agreement should be read together and should be interpreted consistently with the Agreement establishing the Consortium.

B. TERM

The term of this Agreement, unless otherwise terminated or extended according to its provisions, shall be from the date of its execution until June 30, 2015.

C. SCOPE OF SERVICES AND YEARLY RENEWAL

1. Subject to the process provided in subsection C.2. below, the City shall provide staff services to the Consortium each year to handle the financial management outlined in Section E. below and to accomplish the work outlined in the Consortium's Annual Budget and Work Plan and identified as "City of Portland staff services." Compensation for the services shall be as established in the Consortium's Annual Budget. These services may involve, among other things, clerical assistance, technical, financial, and planning services, and administration of contracts between the Consortium and entities or persons who provide goods or services to the Consortium.

2. Each year, the Consortium shall submit its Annual Budget and Work Plan to the City within 15 days of its approval by the Consortium Board. If, within 60 days of receipt of the

the Budget and Work Plan, the City does not provide written notice of its refusal to perform services under the Plan and Budget, then the City shall provide those services, and the financial services outlined in Section E. below, for the fiscal year covered by the Budget and Plan and terms of this Agreement shall define and control the rights and obligations of the City and the Consortium for purposes of the provision of the services for that fiscal year.

3. If, within 60 days of receipt of the Budget and Work Plan, Portland, by resolution of its City Council transmitted in writing to the Chair of the Consortium Board, refuses to perform the services outlined in the Budget and Plan, then the City shall have no obligations to the Consortium regarding the services outlined in that Annual Budget and Work Plan or the financial services outlined in Section E. below, and this Agreement shall terminate as provided in Section K below.

D. COMPENSATION

1. Compensation for any services provided by the City pursuant to this Agreement shall be established in the Consortium Annual Budget and Work Plan as provided in Section C above.

2. In general, the parties expect that the compensation shall be set at a level sufficient to cover the City's actual costs of providing the services. This shall include, among other things, salaries and fringe benefits for City staff assigned to perform the work, including overhead charges, and expenses and out of pocket costs, such as printing, copying, and computer time. Whatever the compensation established in the Annual Work Plan and Budget, however, the City retains discretion to decide not to perform services, as provided in Subsection C.3. above.

3. If, for reasons beyond the control of the City, its costs increase during a contract year, the City may request that the Consortium Board amend its Annual Work Plan or Budget (as provided in Section 8 of the Intergovernmental Agreement establishing the Consortium) to reduce the services the City is obligated to perform or increase payments to the City through voluntary contributions so that the City may be fully reimbursed for its services. The parties agree to negotiate in good faith concerning the City's request in an effort to reach an accommodation.

E. FINANCIAL MANAGEMENT

1. During the term of this Agreement, City shall provide financial and accounting services for the Consortium. This will include, among other things, the calculation of yearly Participant dues, the issuance of dues invoices, the collection of Participant dues, and the payment of Consortium obligations.

2. The City shall maintain separate accounts covering all Consortium revenues and expenditures that will be available for Consortium review at any time. In addition, the City shall report on the accounts of the Consortium at regularly scheduled meetings of the Consortium bodies, but no greater than three month intervals.

3. The City is authorized to charge staff time, materials, and services, and overhead, to the Consortium accounts on a monthly or less frequent basis to compensate it for the services it performs for the Consortium pursuant to the compensation arrangements contained in the Consortium Annual Budget and Work Plan. The City shall provide the Chair of the Consortium Technical Committee a report every two months during the fiscal year, commencing September 1 of each year, describing the charges and expenses incurred performing the services.

4. If, at the conclusion of a fiscal year, there are excess funds in the Consortium accounts that have not been expended for Consortium purposes, the City shall credit the Participant dues for the following year with the excess or disburse those funds as directed by the Consortium Board.

5. For purposes of this Agreement, a fiscal year shall commence on July 1 and end on June 30 of the following year.

F. CITY STATUS AS INDEPENDENT CONTRACTOR

The city shall be an independent contractor for all purposes of performing the services provided for herein and shall be entitled to no compensation other than the compensation provided for under this Agreement and as set forth in the Consortium Annual Work Plan and Budget.

G. PROJECT MANAGEMENT

1. The City's project manager for the work performed under this Agreement shall be designated by the Administrator of the Portland Water Bureau. The Water Bureau Administrator shall consult with the Technical Committee prior to appointing a new project manager and shall, prior to making a decision, give consideration to concerns or suggestions expressed by the Technical Committee. If the Technical Committee objects to the Administrator's decision, it may forward a recommendation that the Consortium Board initiate termination of this Agreement pursuant to Section I. below. The City's Project Manager is authorized to send billings and notices from the City to the Consortium required or referred to herein.

2. The Consortium Technical Committee shall be responsible, on behalf of the Consortium, for administration of this Agreement and overseeing work performed by Portland under this Agreement and is authorized to send notices from the Consortium to the City required or referred to herein. All routine correspondence and communication

regarding this Agreement, including City reports regarding its work under this Agreement, shall be directed to the Chair of the Technical Committee. The Consortium shall provide the Chair's name and address to Portland.

H. SUBCONTRACTING

The City may subcontract for performance of services under this Agreement (except its financial accounting services) if such subcontracting is authorized in the Annual Work Plan and Budget or if the Consortium Technical Committee approves the subcontracting in writing.

I. DISCRETIONARY TERMINATION

Either party may terminate this Agreement for any reason deemed appropriate in its sole discretion by providing 30 days written notice to the other party. Any notice of termination issued during any fiscal year for which the City has, pursuant to Section C.2. above, agreed to perform the services outlined in the Annual Work Plan and Budget, shall only be effective at the end of that fiscal year, that is, midnight, June 30.

J. TERMINATION UPON DISSOLUTION OF CONSORTIUM

This Agreement shall terminate upon the dissolution of the Regional Water Providers Consortium; provided that the City shall be compensated for any work it has performed prior to termination upon Consortium dissolution from existing Consortium funds.

K. TERMINATION PURSUANT TO SECTION C.3.

This Agreement shall terminate should the City Council of Portland pass an ordinance declining to perform services, as specified in Section C.3. above. Any such termination by Council resolution issued during any fiscal year for which the City has, pursuant to Section C.2. above, agreed to perform the services outlined in the Annual Work Plan and Budget, shall only be effective at the end of that fiscal year, that is, midnight, June 30.

L. TERMINATION FOR BREACH

1. Either party may terminate this Agreement if the other party fails to perform its obligations under this Agreement. Prior to such termination, however, the party seeking the termination shall give the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of receipt of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

2. In the event of termination under subsection J., the Consortium shall pay the City for any work performed in accordance with this Agreement prior to termination and the City shall

shall transfer to the Consortium any unexpended funds in accounts held by the City on the Consortium's behalf subject to set off of excess costs.

M. BREACH OF AGREEMENT

1. Either party shall breach this Agreement if it fails to perform any substantial obligation under the Agreement, except as provided in subsection M.2. below.
2. Neither the City nor the Consortium shall have breached this Agreement by reason of any failure to perform a substantial obligation under the Agreement if the failure arises out of causes beyond its control and without its fault or negligence. Such causes may include, without limitation, acts of God or the public enemy, acts of the federal, state or local governments, fires, floods, epidemics, volcanic eruptions, quarantine restrictions, strikes, freight embargoes and unusually severe weather. Should either the City or the Consortium fail to perform because of a cause described in this subsection, the City and the Consortium shall make a mutually acceptable revision of this Agreement to deal with such circumstances.

N. OREGON LAW AND FORUM

This Agreement shall be construed according to the laws of the State of Oregon.

O. ARBITRATION

Any dispute arising out of or in connection with this Agreement, which is not settled by mutual agreement of the Consortium and the City within sixty (60) days of notification in writing by either party, may thereafter be submitted by either party to binding arbitration in Multnomah County, Oregon, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. This right of arbitration supersedes and replaces the right to resolve disputes in a court of law. The arbitration shall be before a single arbitrator, mutually agreed to by the parties. If the parties are unable to agree upon an arbitrator, one shall be appointed by the Presiding Judge (Civil) of the Multnomah County Circuit Court. The cost of the arbitration shall be shared equally; provided, however, that the arbitrator may award costs and fees to the prevailing party. The arbitration shall be held within 60 days of selection of the arbitrator unless otherwise mutually agreed to by the parties.

P. OWNERSHIP OF DOCUMENTS

1. All work the City performs under this Agreement shall be considered work made for hire and shall be the property of the Consortium. The Consortium shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials the

the City produces in connection with this Agreement. Upon request or upon termination of the Agreement, the City shall deliver these materials to the Consortium.

2. The City may retain for its own use and at its own cost copies of the materials referred to in subsection P.1.

Q. NON-WAIVER

The City and the Consortium shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

R. INTEGRATION

This Agreement includes the entire agreement of the Parties and supersedes any prior discussions or agreements regarding the same subject. This Agreement may be modified only in writing signed by authorized representative of the Parties.

APPROVED AS TO FORM:



City Attorney
CITY ATTORNEY

CITY OF PORTLAND

Randy Leonard Date
Commissioner

Lavonne Griffin-Valade Date
City Auditor

REGIONAL WATER PROVIDERS CONSORTIUM


Forrest Soth, Consortium Board Chair Date

**REGIONAL WATER PROVIDERS CONSORTIUM BOARD
RESOLUTION**

WHEREAS, the Intergovernmental Agreement for the City of Portland to Provide staff support services to the Regional Water Providers Consortium (Staffing Intergovernmental Agreement #50880) was amended in 2005 by the Consortium Board and the Portland City Council to extend the services agreement until June 30, 2010, and

WHEREAS, the Consortium Technical Committee, and Board Executive Committee both recommended extending the staffing agreement for another five years, and

WHEREAS, the individual Consortium members adopted changes to the primary Consortium IGA in 2004 that removed the Consortium Technical Subcommittee and consolidated their functions into the Consortium Technical Committee, and

WHEREAS, the number of Consortium Board meetings has been reduced from four to three times per year and the Consortium Technical Committee and Board Executive Committee have reduced the number of their meetings as well the account reporting required under the Staffing IGA does not reflect those changes, and

WHEREAS, the Staffing IGA contains a specifically named individual as Project Manager that is no longer necessary to the functioning of the Consortium over the next five year time period, and


WHEREAS, the Consortium Board was presented concepts for revising the Staffing IGA at their October 7, 2009 meeting, and

WHEREAS, the Consortium Board was presented and discussed the amendments to the Staffing IGA attached as Exhibit A at a meeting on February 3, 2010,

NOW THEREFORE, BE IT RESOLVED THAT:

The Consortium Board approves the amendments to the Staffing IGA as contained in Exhibit A as attached; and recommends adoption of these amendments to the Portland City Council.

DATE: 2/12/2010

SIGNED: 
Forrest Soth, Chair
Regional Water Providers
Consortium Board