

INTERGOVERNMENTAL AGREEMENT NO. _____

An INTERGOVERNMENTAL AGREEMENT (IGA) between the CITY OF PORTLAND, WATER BUREAU ("PWB" OR "PERFORMING AGENCY") and the CITY OF SANDY ("SANDY" OR "FUNDING AGENCY") (COLLECTIVELY HEREINAFTER REFERRED TO AS "THE PARTIES"), for the Sandy Wholesale Connection Project Design and Construction Services.

RECITALS:

1. The City of Portland is a municipal corporation organized under the laws of the State of Oregon. The Portland Water Bureau (PWB) is a bureau within the City of Portland, organized under Chapter 11 of the City of Portland Charter and Title 21 of the City of Portland Code.
2. The City of Sandy is a municipal corporation of the State of Oregon and is authorized by its charter or by state law or both to operate a municipal water system.
3. The Sandy City Council voted on October 6, 2008 to purchase water from the City of Portland and subsequently signed a Water Sales Agreement.
4. The Portland City Council ("Council"), through Ordinance 182880, which was duly adopted by Council on June 3, 2009, authorized the Mayor and the Commissioner-in-charge to enter into and signed a Water Sales Agreement with the City of Sandy.
5. Pursuant to ORS Chapter 190, the Parties have the authority to enter into this Agreement.
6. Both parties desire to enter into an agreement that will formalize terms and conditions by which one party will engage and compensate the other party for performing specific services.

NOW, THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties as follows:

AGREED:

I. THE PROJECT

A. Background:

This project will design and construct the necessary improvements to PWB's system to be able to serve the City of Sandy per the Water Sales Agreement dated June 3, 2009. These improvements will be constructed at PWB's Hudson Intertie Site located at 38943 SE Lusted Road, Sandy, OR 97009.

This agreement is for the design and construction phases of the project. It is anticipated that this Agreement will be active for PWB Fiscal Years 2011-12 and 2012-13. This project received construction bids in February 2012. Construction and close-out are anticipated to be completed by June 30, 2013. Failure to meet the above anticipated completion date does not constitute default or violation of this agreement.

B. Summary of Work and Budget

1. PWB shall perform and manage the design and construction scope of work for the project. A detailed description of the scope of work and the budget is set forth in Exhibit A of this Agreement to document cost sharing responsibilities.
 - a) Design Phase Deliverables
 - (1) Signed Construction Plans and Contract Documents for Bid Solicitation
 - (2) Evaluate Bids and Award Construction Contract
 - b) Construction Phase Deliverables
 - (1) Install connection to existing 66" steel pipe outlet at Hudson Road Intertie and approximately 250 feet of 16" and 20" main
 - (2) Install a 20" actuated valve inside a new underground vault and associated Electrical, Instrumentation & Control Conduits and Equipment.
 - (3) Install a 16" flow meter inside a new underground vault and associated Electrical, Instrumentation & Control Conduits and Equipment.
 - (4) Install two (2) 10" Double Check Detector Assemblies (DCDA - backflow preventers) inside a new underground vault and associated Electrical, Instrumentation & Control Conduits and Equipment.
2. The budget identified in Exhibit A is based on the Engineers Cost Estimate for the project. The tasks, activities, and deliverables described in this Section B and detailed in the Scope of Work and Budget shall be referred to in this Agreement as the "Work".

- C. Construction Standards for the Project** – PWB shall use the current 2010 City of Portland Standard Construction Specifications.

II. CONTRACT MANAGEMENT

- A.** The party for whom the Work is being performed, and who shall be compensating the other party for performing the Work, shall be referred to in this Agreement as the “Funding Agency”. Sandy shall be referred to herein as the Funding Agency.
- B.** The party performing the Work for the Funding Agency shall be referred to in this Agreement as the “Performing Agency”. PWB shall be referred to herein as the Performing Agency.

C. Funding Agency.

1. **Contract Signatory.** The Sandy Contract Signatory shall be Mike Walker or Scott Lazenby or such other person as designated in writing by the Sandy Director (the "Funding Agency Contract Signatory"). The Sandy Contract Signatory is authorized to give notices and to carry out other actions referred to herein, including termination of this Agreement as provided in Section V.
2. **Contract Manager.** The Sandy Contract Manager shall be Mike Walker (the “Funding Agency Contract Manager”). The Sandy Contract Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.

D. Performing Agency.

1. **Contract Signatory.** The PWB Contract Signatory shall be David Shaff, PWB Administrator, or such other person as designated in writing by the PWB Administrator (the "Performing Agency Contract Signatory"). The PWB Contract Signatory is authorized to give notices and to carry out other actions referred to herein, including termination of this Agreement as provided in Section V.
2. **Contract Manager.** The PWB Contract Manager shall be Jodie Inman (the “Performing Agency Contract Manager”). The PWB Contract Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.

E. Management Staffing.

1. A project manager shall be designated by PWB (the "Performing Agency Project Manager"), and a project manager shall be designated by Sandy (the "Funding Agency Project Manager") to carry out the responsibilities designated in this Agreement.
 - a) The Sandy Project Manager shall be Mike Walker, or such other person as designated in writing by the Sandy Contract Manager or Contract Signatory.

- b) The PWB Project Manager shall be Tim Collins, or such other person as designated in writing and approved by the PWB Contract Manager.
2. If either project manager is not performing or is not able to continue performing the responsibilities designated in this Agreement, then the respective contract manager shall designate a replacement project manager.
3. The Sandy Contract Manager and the PWB Contract Manager will confer quarterly to review project management and staffing needs and performance, and identify desired changes, if any. If either PWB or Sandy desires to replace a project manager, or other key staff identified in section II.F. or section II.G. of this Agreement, the party's contract manager shall notify the other contract manager in writing, and if required, they will meet to discuss and agree on any necessary adjustments to provide adequate time to make such change.

F. Project Staffing – Performing Agency (PWB):

PWB shall assign the following personnel to the Project:

1. PWB Project Manager – Tim Collins
2. PWB Project Engineer(s) – Scott Bryan
3. Electrical Engineer – Leigh Kojiro
4. PWB Construction Manager – Tom Leavitt
5. PWB Project Inspector – Cesar Lara
6. PWB Staff Inspector(s) – Clay Luper
7. Specialty Inspector(s) – Ed Day

PWB reserves the opportunity to change personnel for the project on an as-needed basis and the PWB Contract Manager will notify the Sandy Contract Manager when personnel changes occur.

G. Project Staffing – Funding Agency (Sandy):

The following Sandy personnel are being assigned to perform the Work and will notify PWB Contract Manager when personnel changes occur:

1. Mike Walker, Director of Public Works for City of Sandy
2. Matt Hickey, Murray Smith & Associates – Consulting Engineer for the City of Sandy

H. Approvals.

1. PWB is not obligated to perform, and Sandy is not authorized to pay for, any work not identified in the Scope of Work and Budget.

I. Project Management.

1. The PWB Project Manager and the PWB project team shall manage the design and construction of the project including but not limited to Design, Construction Contract Management, and Coordination with Sandy's Project Manager and Consultant.
2. During the Construction Phase of the project, the PWB Contract Manager will provide a monthly project status report to the Sandy Project Manager. The PWB Contract Manager will provide a billing for Sandy's cost sharing portion of the project to the Sandy Project Manager at the conclusion of the project or the end of PWB Fiscal Year 2012-13, whichever date comes first.
3. The Sandy Project Manager shall review and process all billings for reimbursement to PWB during the construction phase of the project.
4. Project Status Reports are required to be submitted beginning within 60 days after the Effective Date of this Agreement and thereafter at a frequency of one per month. A template report shall be discussed and agreed to as part of the Project's kickoff meeting.

J. Public Involvement.

1. Where projects require public involvement, PWB and Sandy will collaborate on design of the public involvement plan that is endorsed by both project managers.
2. PWB and Sandy will keep each other informed of written material (e.g., news releases, brochures, news letters, reports) produced for the Project that are intended for public distribution and will provide adequate time for review and discussion prior to distribution.
3. Each project manager will inform the other project manager of inquiry from a media or press representative and make reasonable efforts to consult with the other project manager prior to any verbal or written information on the Project being provided to such a representative; if unable to make a prior consultation, notice will be provided afterwards.

K. Meeting Participation. Each project manager will invite the other to attend all regular or significant Project meetings and to participate in steering, management, or technical advisory committees organized for the Project.

L. Work Product. The Sandy Project Manager will, upon his or her request, receive timely copies of all work products, including drawings, specifications, designs, draft and final copies of technical and consultant analysis and reports, construction progress reports, QA/QC test results and acceptance of construction end products, and key correspondence prepared or received during the course of the Project.

M. Subcontractors. A subcontractor is any other entity that PWB uses to carry out all or part of the Work.

1. PWB will have the sole authority to direct the work of any authorized and approved subcontractors.
2. PWB and/or any approved subcontractors are not obligated to perform, and Sandy is not authorized to pay for, any work not identified in the Scope of Work and Budget.

N. Good Faith Efforts Requirements. The City of Portland has a program to ensure that its contracts provide employment opportunities for Oregon State certified minority, women, and emerging small businesses (M/W/ESB). On projects estimated at \$200,000 and above, Bidders are required to submit documentation showing that Good Faith Efforts (GFE) have been made to contract with M/W/ESB Subcontractors. These requirements and details of the program will be part of the construction contract bid documents and specifications.

III. COMPENSATION / ALLOWABLE COSTS

A. Sandy shall pay PWB a sum of Three Hundred Thirty Two Thousand (**\$332,000.00**) dollars for accomplishment of the Work, subject to budget authorization by Sandy (see Exhibit A).

B. PWB may seek reimbursement from Sandy for the following costs, subject to the expenditure of these funds for performance of the Work and within the authorized budget.

1. Direct Costs

- a) Personnel Services. Covers reimbursement for direct wages paid to personnel engaged in performance of the Work.
- b) Benefit Costs. Covers reimbursement for the fully loaded benefit costs associated with direct wages, which represents the actual benefit load attributable to the respective employees.
- c) Materials & Services. Covers actual costs for the purchase of materials, supplies, and services, or reimbursement of incidental expenses and the PWB support staff personal services where the expenditure is for performance of the Work and within the authorized budget.
- d) Contracted Services. Covers reimbursement for contracted professional or construction services in carrying out the Work and within the authorized budget.

2. Indirect Costs. Covers reimbursement for overhead costs at the rate established annually, for the Bureau in accordance with City Code Section 5.48.

- a) The current overhead cost rate for FY 2011-12 is 114.74%. PWB Indirect costs pay for generally fixed costs related to the administration and operation, as well as program management costs including Council charges, executive management staff, rent, telephone, power, insurance, office supplies, and equipment.
 - b) If the rate changes for PWB Fiscal Year 2012-13, the PWB Contract Manager shall provide written notification to the Sandy Contract Manager of the new Fiscal Year rate.
3. The Sandy Project Manager shall be immediately notified of any actual or anticipated variance between the authorized budget and the estimated cost or expenditures described in the Scope of Work and Budget. The parties shall then make a good faith effort to negotiate for a successful modification to this Agreement. Unless this Agreement is modified, Sandy shall not be obligated to make payments for costs that exceed the authorized budget.
- C. Expense Costs. Expenses, including personnel services, incurred for out of town travel, training, educational expenses and equipment purchase are not reimbursable under this Agreement unless mutually agreed to in advance.
 - D. Change Management Controlled by PWB. "Change management" is the process by which the impact of changes is controlled or mitigated and alterations are evaluated, approved, and incorporated into the Scope of Work and Budget. In consultation with the Contract Manager of Sandy, Contract changes affecting the Scope of Work and Budget shall be managed by the PWB Contract Manager. The funds for the subsequent Change Order(s) will be shared by Sandy and PWB as agreed by the Sandy and PWB Contract Managers.

IV. BILLING AND PAYMENT PROCEDURE

- A. PWB shall submit to the Sandy Project Manager a separate itemized billing for work performed as described in the Scope of Work and Budget for review and approval at the conclusion of the project or the end of PWB Fiscal Year 2012-13, whichever date comes first.
 - 1. Sandy shall pay PWB the balance due within thirty (30) days of receipt of such billing(s).
- B. Billings shall include a Billing Detail Report in a format created and/or approved by Sandy. At a minimum, each billing shall include:
 - 1. a description of the nature and cost of work accomplished;
 - 2. the names, rates and hours worked of Performing Agency personnel;
 - 3. disbursements to consultants, contractors and outside vendors for materials and services; and
 - 4. any other specific detail or documentation as desired by the Sandy Contract Manager which can be reasonably provided by PWB.

- C. If billings are received with incomplete information or disputed items, Sandy will advise PWB in writing what specific information is missing or disputed. Sandy will proceed to process payment for items not in dispute.

V. GENERAL

A. Termination.

1. The Termination Date of this Agreement is June 30, 2013.
2. Early Termination of Agreement.
 - a) This Agreement may be terminated at any time by mutual written consent.
 - b) Upon thirty (30) days written notice, either party may terminate this Agreement where the public interest requires work to cease.
 - c) In the event of early termination of this Agreement, the work shall cease promptly and a final billing request submitted within sixty (60) days of the effective date of termination. In the event of early termination, eligible costs incurred through the date of the Agreement's termination will be reimbursed.

B. Change and Conflict Resolution.

1. Every effort has been made to accurately identify the scope, schedule and budget for the Work. PWB and Sandy recognize that events and conditions may arise that significantly impact the Project. A "significant" impact is one that may increase the budget beyond the total authorized budget amount shown in the Scope of Work and Budget, or delay completion of this phase of the Project more than one year. Should either party identify or foresee such a circumstance, both parties agree to the following:
 - a) As soon as practicable, notify both the project manager and contract manager of the other party in writing of the circumstance, its origin and anticipated or confirmed impact.
 - b) Both project managers shall make reasonable efforts to meet within 14 days to identify anticipated or confirmed affects to the Project's scope, schedule and budget.
 - c) Both parties shall seek to reach agreement on any necessary revisions to this IGA as described below in Section V. B. 2.
2. If a dispute arises regarding performance, cost, schedule, scope, quality or other terms and conditions of this Agreement, all parties agree to exercise good faith in expeditiously resolving said conflict in the following manner.
 - a) All conflicts should first be discussed and resolved if at all possible by the project managers specified in Section II.

b) If the conflict cannot be resolved by the project managers, or involves one of the project managers, then the conflict should be elevated to the contract managers specified in Section II for discussion and resolution.

c) Any conflicts not resolved by the contract managers shall be elevated to the contract signatories for discussion and resolution.

C. Compliance with Laws. In connection with its activities under this Agreement, the parties shall comply with all applicable federal, state and local laws and regulations.

D. Indemnification.

Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, PWB agrees to indemnify, hold harmless and defend, Sandy, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys fees, resulting from or arising out of the activities of PWB, its officers, employees or agents under this Agreement.

Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, Sandy agrees to indemnify, hold harmless and defend, PWB, its officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys fees, resulting from or arising out of the activities of Sandy, its directors, employees or agents under this Agreement.

E. Subcontracting. PWB shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of PWB as specified in this Agreement. PWB shall remain obligated for full performance hereunder, and Sandy shall incur no obligation to the subcontractor hereunder. PWB shall have the sole authority to direct the work of any authorized and approved subcontractors.

F. Ownership of Work Product.

Ownership of any and all plan sets, technical data, documents, plans, designs, drawings, technical data reports, specifications, working papers, and construction end products produced in connection with this Agreement (the "Work Product") will be handled as described below. Ownership of the Work Product includes all rights, title and interest, including but not limited to copyright rights of specified Work Products.

1. Except as described in paragraph 2 below, PWB shall own all Design Work Products. PWB shall own all construction end products located within PWB's Hudson Intertie Site property (i.e. flow meter, vaults, instrumentation equipment, valves, DCDA's, 16" & 20" piping, etc). These facilities shall be tested and maintained by PWB.
2. Regardless of ownership of the Work Product, both parties shall have reasonable access to the Work Product during the construction of the project.

3. After the conclusion of this project and agreement, PWB and Sandy shall enter into a separate agreement for access to PWB's Hudson Intertie Site by Sandy.

G. Delivery / Maintenance of Records. PWB shall maintain records on a current basis to support its billings to Sandy. Sandy or its authorized representative shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of PWB regarding its billings or its work hereunder, for a period of three (3) years after completion or termination of this Agreement.

VI. AMENDMENTS

1. Except as otherwise provided for in this Agreement, PWB or Sandy may amend this Agreement only in writing signed by the contract signatories.
2. Changes to the Scope of Work and Budget:
 - a) Changes to the Scope of Work and Budget, including changes to scope, schedule, and budget identified in Section I, which do not increase the total compensation under this Agreement, may be made upon written agreement by the project managers identified in Section II of this Agreement.
 - b) Changes to the Scope of Work and Budget which do increase the total compensation under this Agreement will require signatures from the designated Sandy and PWB Contract Signatories.
 - c) Changes will not take effect or be binding on either party until agreed to in writing.

VII. MERGER CLAUSE

This Agreement contains the entire agreement between PWB and Sandy in regards to this project. It supersedes all prior written or oral discussions or agreements concerning work to be performed by either party.

VIII. PERIOD OF AGREEMENT

The term of this agreement shall be effective as of April 25, 2012 and shall terminate effective June 30, 2013.


Dated this _____ Day of _____, 2012.

IN WITNESS WHEREOF, the Portland Water Bureau and City of Sandy have executed this Agreement as of the Effective Date.

CITY OF PORTLAND

CITY OF SANDY

David G. Shaff, Administrator
Portland Water Bureau



Mike Walker, Director of Public Works

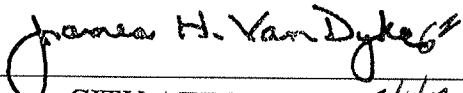
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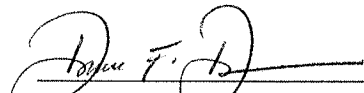
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APPROVED AS TO FORM:
APPROVED AS TO FORM

APPROVED AS TO FORM:



City Attorney CITY ATTORNEY 5/1/12



Legal Counsel

City Auditor

Date

EXHIBIT A – Scope of Work & Budget

The Sandy Wholesale Connection project is a joint cooperation between the Portland Water Bureau (PWB) and the City of Sandy. There are three (3) major components of the project that the cost sharing breakdown will be based on.

- 1) PWB Wholesalers share of the wholesale connection – The scope of work includes, but is not limited to the 66"x20" conduit tee, 20" Limitorque valve with actuator and vault, 16" flow meter with vault, and associated piping between the conduit tee to the 16" flow meter vault.
- 2) City of Sandy share of the wholesale connection – The scope of work includes, but is not limited to the 16" outlet piping from the 16" flow meter, two (2) 10" double check valve backflow preventers and vault, and associated piping between the flow meter to the edge of the PWB Hudson's Intertie property for the future connection to the City of Sandy's supply/transmission main in SE Lusted Rd.
- 3) PWB share of the wholesale connection – The scope of work includes, but is not limited to the Electrical and Instrumentation plans, conduits, switches, and equipment that are installed by the Contractor and PWB Internal Staff.

The cost estimate for the entire project from Planning, Design, and Construction phases is approximately \$1,032,000 with the following cost share breakdown:

Cost Items	PWB Wholesale Customer Shared Funding	Sandy Funding	PWB Funding
Construction Contract	\$144,300	\$152,000	\$74,000
Direct Costs	\$102,200	\$86,000	\$159,700
Indirect Costs	\$112,500	\$94,000	\$107,300
Totals	\$359,000	\$332,000	\$341,000