

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE PORTLAND WATER BUREAU AND CITY OF SANDY**

FOR THE SANDY FIBER CONNECTION PROJECT

This Intergovernmental Agreement (IGA or Agreement) is entered into by and between the City of Portland, Oregon, acting by and through its Water Bureau, hereafter called "CITY" and the **City of Sandy**, hereafter called "Sandy" and collectively referred to as the "Parties". This IGA is authorized pursuant to ORS 190.110 and becomes effective upon full execution of this document.

RECITALS

1. The City of Portland (City) is a municipal corporation organized under the laws of the State of Oregon. The Portland Water Bureau (PWB) is a rate-financed utility responsible for the finance, operation, maintenance and improvement of the City's water distribution system, organized under Chapter 11 of the City of Portland Charter and Title 21 of the City of Portland Code.
2. The City of Sandy (Sandy) is a municipal corporation organized under the laws of the State of Oregon.
3. In 2012, the PWB and Portland General Electric (PGE) entered into an agreement to exchange dark fiber capacity over separately owned and operated fiber optic communication systems. The exchange agreement addresses the exchange and use of dark fiber, handholes, vaults and access points between and among PGE and PWB.
4. Sandy is undertaking to build a system of conduit and optical fibers to include separate additional facilities for PWB. As part of this project, Sandy shall design and construct additional fiber infrastructure within the right-of-way of SE Bluff Road from approximately SE Dunn Road to SE Bell Road and within SE Bell Road from SE Bluff Road to Sandy High School, in accordance with the specifications set forth in this Agreement.
5. This IGA is for the design and construction of the fiber optic infrastructure by Sandy for the PWB.

NOW, THEREFORE, it is agreed by and between the Parties as follows:

AGREEMENT

1. DEFINITIONS AND RESPONSIBILITIES

- A. Definitions.** Each defined term shall have the meaning ascribed where such term is first used.

Term	Description
Cable	Bundled fibers, and associated splicing connections, pedestals, pole attachments, pull and splice boxes, and vaults.

Conduit Facility	Any structure, or section thereof, containing one or more ducts, conduits, manholes, handhole or other such facilities.
Dark Fiber	One or more Fibers provided under this Agreement without electronics or optronics, and which are not "lit" or activated by Sandy, through which the PWB shall transmit light, signal or light communication transmissions to furnish service.
Duct	A single enclosed HDPE raceway for optical fiber, within a Conduit Facility.
Fiber	A filament of transparent dielectric material, usually glass or plastic, and usually circular in cross section, consisting of a core and cladding, used to convey modulated information by means of lightwave impulses.
Manhole/Handhole	Subsurface enclosures that enable personnel to enter into or otherwise use as a means for accessing Conduit and Dark Fibers.

B. Performance Responsibilities

1. Sandy's Responsibilities

Sandy shall 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.

a) Design Phase Deliverables

Sandy shall provide the following to PWB:

- (1) Signed Construction Plans and Contract Documents for bid solicitation.
- (2) Bid evaluation and construction contract award.

b) Construction Phase Deliverables

Sandy shall complete the following:

- (1) Obtain any necessary construction permits and install approximately 8,760 feet of Conduit Facilities and Dark Fiber in SE Bluff Road from approximately SE Dunn Road (Dunn's Corner) to Bell Road, in accordance with the specifications set forth in Exhibit A.
- (2) Obtain any necessary construction permits and install approximately 950 feet of Conduit Facilities and Dark Fiber in Bell Street from Bluff Road and terminate in Sandy High School, in accordance with the specifications set forth in Exhibit A. The provision of Dark Fiber along the Bell Street leg may be within existing conduit, if available.

c) **Delivery and Acceptance**

- (1) At the time of installation Sandy shall test all Fibers to verify that they have been installed and are operating in accordance with the Specifications described in Exhibit B to this Agreement (Specifications).

When Sandy has determined that the results of the testing indicate that the Dark Fibers are operating in conformity with the Specifications, Sandy shall promptly provide PWB a written notice (Completion Notice) together with a copy of the test results.

(2) **Acceptance**

Within sixty (60) days following receipt of the Completion Notice, PWB shall provide Sandy with a written notice accepting or rejecting the Dark Fibers, and specifying in reasonable detail, if rejected, any identified defects or failures. If PWB fails to notify Sandy of its acceptance or rejection of the Completion Notice within sixty (60) days following receipt of the Completion Notice, PWB shall be deemed to have accepted the Dark Fibers. The date of such notice of acceptance or deemed acceptance shall be the "Acceptance Date".

(3) **Completion**

In the event of any good faith rejection by PWB, Sandy shall take such action as reasonably necessary, and as expeditiously as practicable, to correct or cure such defect or failure in accordance with the Specifications, and the notification and acceptance procedure shall be repeated until the Dark Fibers are within the Specifications. Notwithstanding, if PWB uses the Dark Fibers other than for testing prior to acceptance, such use shall constitute acceptance of the Dark Fibers and the first date of such use shall be the Acceptance Date.

- (4) Unless otherwise agreed by the City Project Manager, Sandy shall complete all work on the project by **December 31, 2013**.

d) **Construction Completion**

- (1) Upon Acceptance by PWB of the Dark Fibers, Sandy shall provide to PWB the following:
- (a) A copy of the as-built drawings identifying the location of the Dark Fiber and the Conduit Facilities provided under this Agreement;
 - (b) A route map depicting each Segment with street level details;
 - (c) The fiber assignments, if applicable;
 - (d) Circuit IDs, if applicable; and,
 - (e) Any applicable rack, panel and port numbers in any vaults, pedestals or other demarcation points.
- (2) Sandy will shall provide suitable documentation of ownership to PWB, establishing title to the Dark Fiber and the Conduit Facilities free and clear of any claims or liens.

- (3) Sandy is not supplying nor is Sandy obligated to supply to PWB any optronics or electronics or optical or electrical equipment or other facilities, including without limitation, generators, batteries, air conditioners, fire protection and monitoring and testing equipment, all of which are the sole responsibility of PWB, nor is Sandy responsible for performing any work other than as specified in this Agreement.

e) Compensation

Sandy shall submit to PWB an itemized billing for work performed as described in Exhibit A - Scope of Work after completion of the project and acceptance by PWB.

The CITY has authorized a total not to exceed amount of \$65,000 available in Fiscal Year 2013-14. The City of Portland's Fiscal Year is defined as July 1 through June 30 of each year. Once PWB has sent Sandy a notice of acceptance for the work, Sandy shall submit to the PWB's Finance and Accounting Office an invoice for work performed. The invoice shall identify the work that has been completed per the terms of this agreement. The invoice shall be submitted electronically to wbaps@portlandoregon.gov.

Sandy shall fully cooperate with a City of Portland Audit of the records at any time.

2. PWB's RESPONSIBILITIES

PWB shall:

- a) Apply for and obtain applicable right of way permits from Sandy and Clackamas County for the Dark Fiber and the Conduit Facilities to be provided by Sandy. Such responsibility shall include paying any associated permit fees. PWB shall also be responsible for obtaining any other applicable governmental and other approvals and consents necessary for the operation and maintenance of the Fibers and associated facilities. PWB shall obtain any necessary rights of way and other consents for access to all locations outside of the public rights of way for the purpose of equipment installation, periodic maintenance, and services, and for the use of any required building facilities.
- b) Provide any optronics or electronics or optical or electrical equipment or other facilities, including without limitation, generators, batteries, air conditioners, fire protection and monitoring and testing equipment. Following Acceptance, PWB shall be solely responsible for the technical operation, maintenance and repair of the Dark Fiber and associated facilities, including any maintenance reasonably necessary for the normal operations.
- c) After Sandy has provided the appropriate documentation to PWB under Section 1.B.1.(d)(1) above, all property right, title or interest in such Dark Fiber and Conduit Facilities shall be vested in PWB, notwithstanding that it may be or become attached to or embedded in realty and Sandy shall have no further rights or obligations with respect to such property.
- d) PWB may use the Dark Fiber and associated facilities for any lawful purposes.

- e) 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

(Work Products) shall 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. Sandy shall own all Work Products and reasonably maintain them, except for permits and other government consent obtained by PWB. Regardless of ownership of the Work Product, both parties shall have reasonable access to the Work Product during the construction of the project.

2. MANAGEMENT

a) PWB Contacts

The PWB Project Manager shall be **Jodie Inman**, or such other person as PWB may identify in writing. The PWB Project Manager shall be responsible for the day-to-day management of this Agreement. The PWB's Contract Administration Branch contact is Corrina Rodriguez. All contract actions must be submitted directly to the PWB Contract Administration Branch contact.

b) Sandy Contract Manager

The Sandy Contract Manager shall be **Mike Walker**, or such other person as Sandy may identify in writing. The Sandy Contract Manager is responsible for the day-to-day management of this Agreement for Sandy and may give notices and carry out other actions for the PWB, including early termination.

The Sandy Contract Manager and the PWB Project Manager shall confer to review project management and staffing needs and performance, and identify desired changes, if any.

c) Sandy Project Staffing

Sandy shall assign the following personnel to the Project:

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

d) Approvals

1. No work shall be performed and no funds shall be obligated until this Agreement is fully executed and approved by the City of Portland's City Council via ordinance.
2. Sandy is not obligated to perform, and PWB is not authorized to pay for, any work not identified in the Scope of Work and Budget.

e) Public Involvement

1. Where projects require public involvement, PWB and Sandy shall collaborate on design of the public involvement plan that is endorsed by both project managers.

2. PWB and Sandy shall 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 shall provide adequate time for review and discussion prior to distribution.
3. Each Project Manager shall 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 shall be provided afterwards.

f) Meeting Participation

Each Project Manager shall 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.

Within 60 days from the completion of work by Sandy, the City shall inspect the project and advise Sandy if the City accepts or does not accept the work. If the work is not accepted, the City shall specify what work must be performed to make the project acceptable. Within 60 days of such notice, Sandy shall complete all work directed by the City.

3. MISCELLANEOUS

A. Duration and Termination

1. This agreement shall be in effect until **January 30, 2014** or until PWB has accepted the Dark Fiber and Conduit Facilities under Section 1.B.1(c), whichever occurs later, unless earlier terminated.
2. **Early Termination of Agreement**
 - a) This Agreement may be terminated at any time by mutual written consent.
 - b) The City may terminate this agreement at any time after **December 31, 2013**, if the work is not completed.
 - c) Upon thirty (30) days written notice, either party may terminate this Agreement if the other has defaulted in its obligations under the Agreement.
 - d) 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 shall be reimbursed.
 - e) **Default**

A default shall be deemed to have occurred under this Agreement if, in the case of any material breach of this Agreement, a Party fails to cure such breach within thirty (30) days after notice specifying such breach; provided that if the breach is of a nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching Party has commenced to cure within said time period and thereafter diligently pursue such cure to completion.

B. Change and Conflict Resolution

1. Every effort has been made accurately to identify the scope, schedule and budget for the Work. PWB and Sandy recognize that events and conditions may arise that significantly affect the Project. A "significant" effect 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 past December 31, 2013. 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 2., Management of this Agreement.
 - b) If the conflict cannot be resolved by the Project Managers, or involves one of the Project Mmanagers, then the conflict should be elevated to the Contract Managers specified in Section 2., Management of this Agreement for discussion and resolution.
 - c) Any conflicts that cannot be resolved by the Project Managers shall be elevated to the Agreement signatories for discussion and, if possible, 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, the City of Sandy agrees to indemnify, hold harmless and defend the City of Portland, 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 the City of Sandy, its officers, employees or agents under this Agreement.

Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, the City of Portland agrees to indemnify, hold harmless and defend, the City of Sandy, 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 the City of Portland, its directors, employees or agents under this Agreement.

E. Subcontractors

A subcontractor is any other entity that Sandy uses to carry out all or part of the Work. Sandy shall have the sole authority to direct the work of any authorized and approved subcontractors. Sandy shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of Sandy as specified in this Agreement. Sandy shall remain obligated for full performance hereunder, and PWB shall incur no obligation to the subcontractor hereunder.

F. No Waiver

A waiver by either Party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any breach of covenant or other matter subsequently occurring.

G. Delivery/Maintenance of Records

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

H. Amendments

1. Except as otherwise provided for in this Agreement, PWB or Sandy may amend this Agreement only in writing signed by the parties authorized 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 this Agreement.
 - b) Changes to the Scope of Work and Budget which do increase the total compensation under this Agreement shall require signatures from duly authorized representatives of Sandy and PWB.
 - c) Changes shall not take effect or be binding on either party until agreed to in writing.

I. Merger

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.

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

CITY OF PORTLAND

David G. Shaff, Administrator
Portland Water Bureau

Date

APPROVED AS TO FORM:
APPROVED AS TO FORM

James H. Van Dyke
City Attorney CITY ATTORNEY 4/12/13

City Auditor

Date

CITY OF SANDY

Mike Walker
Mike Walker, Director of Public Works

Date

APPROVED AS TO FORM:

Don F. D.
Legal Counsel

EXHIBIT A – Scope of Work

The Scope of Work to be performed by the City of Sandy includes:

- 1) Install 2-inch conduit in SE Bluff Road from approximately SE Dunn Road (Dunn's corner) to Bell Road.
- 2) Pull 48 strand fiber cable in new 2-inch conduit in SE Bluff Road from approximately SE Dunn Road (Dunn's corner) to Bell Road.
- 3) Install C-type pull boxes a minimum of every 600 ft along the running line or change in direction.
- 4) Install one (1) 444-LA vault with 44-38C round cast lid along the running line for slack storage and splicing.
- 5) Terminate the 48 strand cable at SE Dunn Road in a C-type pull box within 15 feet of the existing fiber cabinet.
- 6) Pull the 48 strand fiber cable from the vault on the east side of SE Bluff Road at the intersection with SE Bell Road to Sandy High School via the existing fiber conduit.
- 7) Terminate the 48-strand fiber in the existing fiber room in Sandy High School.

EXHIBIT B – Fiber Performance Specifications

1. The following tests shall be performed to validate the various system components:
 - The bi-directional average loss per span as measured with a power meter test set shall not exceed the following amount:

$$(A * L) + (0.1 * N) + (0.5 * C) = \text{Acceptable Span Loss}$$

A = Maximum attenuation per km, 0.25 dB/km at 1550 nm or 0.35 dB/km at 1310 nm

L = Optical length of cable measured in kilometers (from OTDR trace)

N = Number of splices in a span

C = Number of mated connector pairs
 - Maximum Individual Splice Loss: The maximum individual bi-directional average splice loss as measured with an OTDR shall not exceed 0.25 dB.
 - Maximum Individual Connector Loss: The maximum individual bi-directional average connector loss as measured with an OTDR shall not exceed 1.0 dB per mated pair.
 - Reflectance: Tested with OTDR. The maximum reflection per event shall not exceed -46 dB.
2. In the event that a cable sheath making up part of the Lessor Fiber contains a non-dielectric cable, it shall be properly protected from foreign voltage and grounded with an industry-accepted system.
3. The fibers shall be terminated to the fiber termination panel with SC-UPC or FC-UPC connectors.