

## INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement is effective upon day of its last signature by representatives of the parties, is by and between Tualatin Valley Water District, a domestic water supply water district organized under ORS Chapter 264 (TVWD), the City of Portland, a municipal corporation (Portland), and the City of Tualatin, a municipal corporation (Tualatin).

### RECITALS

The parties are duly authorized and formed by City Charter and under the laws of the State of Oregon and are authorized to enter into agreements to provide for domestic water service.

TVWD presently has sources of water from the City of Portland and the Joint Water Commission. Portland has its source of water from the Bull Run system and the Columbia South Shore Well Field. Tualatin is a wholesale water purchaser from Portland.

Each party recognizes that there are mutual benefits to evaluate the capacity of emergency water supply from TVWD for TVWD, Portland and Tualatin in the event of supply limitations of the Portland system. TVWD has solicited proposals from consultants to conduct analysis and planning to evaluate capacity and design concepts for a temporary emergency pump station to allow TVWD to supply water to Portland and Tualatin from TVWD's Joint Water Commission source.

The goal is to evaluate the design and construction of temporary pumping facilities to provide up to 20 million gallons per day at or near Portland's meter vault on the Washington County Supply Line in Beaverton Hillsdale Hwy.

Now, therefore, the parties agree as follows:

1. Recitals. The recitals above are incorporated by reference and made a part of this Agreement.
2. Retention of Consultant. TVWD has solicited a scope of work from HDR, Inc. to provide engineering services to evaluate the ability of TVWD to provide emergency water supply to its own Metzger district and to Portland and Tualatin in the event of supply limitations of the TVWD or Portland system. The scope of services to be performed by the consultant is described in Exhibit 1 of this Agreement and incorporated by reference. If the HDR evaluation is deemed positive by all the parties, then the Parties agree they shall endeavor to negotiate a new Agreement regarding design and construction including allocation of costs. Nothing in this Agreement, however, commits any party to proceed with any new Agreement or subsequent project.

3. Payment. The parties agree that TVWD shall contract with HDR at the total price of \$50,000 and that Portland shall reimburse TVWD for one-half of the total HDR costs and Tualatin will reimburse TVWD 25% of the total HDR costs. TVWD will invoice Portland and Tualatin for their respective shares as progress payment requests from HDR are received. Portland and Tualatin shall pay the amount of the invoice within 30 days. If there is a dispute of the amount due, Portland and Tualatin shall pay the undisputed amount and the disputed amount will be resolved through Section 10 below. However, in no case shall Portland be obligated to pay more than \$25,000 under this Agreement.

A. Invoices submitted to Portland shall be submitted electronically to [wbaps@portlandoregon.gov](mailto:wbaps@portlandoregon.gov)  
The invoice shall contain the City of Portland's Contract Number and include Portland's Project Manager Name.

B. Invoices submitted to Tualatin shall be submitted electronically to [khofmann@ci.tualatin.or.us](mailto:khofmann@ci.tualatin.or.us)

4. Project Manager. Stewart Davis of TVWD will be the program manager and responsible for all direction to HDR. Portland designates Stan VandeBergh as its project manager, and Tualatin designates Kaaren Hofmann as its project manager.

5. Compliance with Law. TVWD shall be solely responsible to comply with all state statutes and rules regarding the contract with HDR.

6. Documents. Each party shall provide water system-related documents and information as reasonably necessary in order for HDR to perform its work hereunder. Each party shall receive any interim, draft and final reports or recommendations produced by HDR, and each party may submit, within a reasonable time, comments or recommendations on the HDR products. Any request shall be met within a reasonable period of time. Each party may request and is entitled to receive copies of any materials obtained or produced by HDR under its contract with TVWD.

7. Confidentiality. Except as required by law, disclosure of any information designated as "for non-disclosure" or "confidential" that has or shall be gathered and provided to the City of Tualatin and Tualatin Valley Water District as part of the Washington County Supply Line Emergency Pump Station Project shall be a breach of the terms of this agreement. All parties agree to make provisions to secure all project records designated "for non-disclosure" or "confidential" including drafts. The parties shall impose these same requirements on all employees, agents, other firms and their employees participating in the project.

The parties agree that any breach of this Agreement shall cause irreparable harm to the other parties and without limitation of any other remedy; any party

may obtain injunctive relief to prevent disclosure. Jurisdiction and venue shall be in the Circuit Court of the State of Oregon for the County of Washington.

8. Records Maintenance; Access. The parties shall maintain all records relating to this Agreement in such a manner as to clearly document performance. Each party and their duly authorized representatives shall have access to records to substantiate performance, including fiscal records and other books, documents, papers, plans and writings of the other parties that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts upon not less than two (2) business days' prior written notice. The parties shall retain and keep accessible all records related to performance, fiscal records, books, documents, papers, plans and writings as required by Oregon Public Records Laws, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

9. Indemnity. To the fullest extent permitted by the Oregon Constitution, laws of the State of Oregon regarding units of local government and subject to the monetary limits of ORS 30.260 – 30.300, each party agrees to indemnify, defend and hold the others harmless from any liability claim or injury arising from that parties' acts or omissions in connection with the performance of this Agreement.

10. Insurance. Contract documents with HDR shall require that HDR obtain, prior to beginning any work, and shall maintain in full force and effect for the term of the contract at HDR's expense, comprehensive general liability to include bodily injury and property damage on a combined single limit per occurrence aggregate basis; automobile liability with a combined single limit coverage to include bodily injury and property damage; and other insurance appropriate to the work to be performed in amounts not less than what TVWD would require for that type of work. The named insured on any policy shall be HDR, the City of Portland, City of Tualatin and Tualatin Valley Water District. HDR shall name City of Portland, City of Tualatin and TVWD their elected appointed officials, officers, agents, employees and volunteers as additional insured. The policy shall be primary to and not contributory with any insurance or self-insurance carried by the Parties and issued by a company authorized to business in the State of Oregon. HDR shall provide TVWD written notice within 30 days of cancellation or material modification of the insurance contract at the addresses listed below. HDR shall provide certificates of insurance and additional insured policy endorsement to TVWD prior to commencement of any work under the contract. If requested, complete copies of insurance policies shall be provided to City of Portland, City of Tualatin and TVWD. HDR shall be financially responsible for all pertinent deductibles, self-insured retention and or self-insurance used to satisfy these requirements.

11. Term. This Agreement shall expire without further acts of the parties upon completion of the project by HDR or June 30, 2014, whichever is sooner. This Agreement may be terminated earlier by mutual agreement of the parties or by breach or default.

12. Breach, Default and Disputes. If any Party breaches any covenant hereunder, the non-breaching party may revoke this Agreement at any time by giving thirty (30) days' written notice specifying the breach. If the breach is not cured within that time, the non-breaching party may send a second notice terminating this Agreement immediately, and the Agreement shall be terminated unless the disputing parties request dispute resolution in writing:

- A. The Chief Executive Officer of TVWD, the Administrator of the Portland Water Bureau, and the City Manager of Tualatin shall meet to resolve the matter within thirty (30) days. If resolved, a written agreement memorializing the resolution will be executed.
- B. If resolution is unsuccessful, then within ten (10) days any party may request mediation. If the parties cannot agree on a mediator, they shall use Arbitration Services of Portland, Oregon, to select a mediator. Mediation shall be concluded within sixty (60) days unless the disputing party agrees to a different schedule. If resolved, a written agreement shall be executed and approved by the appropriate decision maker.
- C. If mediation is unsuccessful, within fifteen (15) days, any party may seek any legal or equitable remedy in the Circuit Court of the State of Oregon for Washington County.
- D. Attorney Fees. If any suit, action, arbitration, mediation or other proceeding is instituted to enforce rights or otherwise pursue, defend, or litigate issues related to this Agreement, or any other controversy arises from this Agreement, and regardless of any statute to the contrary, each party shall bear its own attorneys fees and costs. The award of costs and expenses on appeal from a judgment entered after trial shall be to the prevailing party designated as such by the appeals court.

13. Notices. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, mail, facsimile, or email.

- A. Notice By Personal Delivery. Any communication or notice given by personal delivery shall be effective when actually delivered.

- B. Notice by Mail. Notice given by mail shall be by postage prepaid, to the relevant party at the address, set forth herein, or to such other addresses as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing.
- C. Notice by Facsimile. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective, any notice transmitted by facsimile must be confirmed by telephone to the recipient's Project Manager.
- D. Notice by Email. Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system, or by actual confirmation by the recipient.
- E. Unless otherwise notified in writing as set forth above, notices shall be given to the Project Managers. If a Party's Project Manager is changed, notification of the change shall be promptly made in writing to the other parties. If a party receives a communication from the other parties not executed by the Project Manager, the party may request clarification from the sending party's Project Manager, which shall be promptly furnished.

Stu Davis, P.E.  
 Tualatin Valley Water District  
 1850 SW 170<sup>th</sup> Avenue  
 Beaverton, OR 97006

Stan VandeBergh, P.E.  
 City of Portland Water Bureau  
 1120 SW 5th Ave., Rm. 600  
 Portland, OR 97204

Kaaren Hofmann, P.E.  
 Engineering Manager City of Tualatin  
 18880 SW Martinazzi Avenue  
 Tualatin, OR 97062

14. Successors and Assigns. The terms and conditions of this Agreement shall be binding upon any and all successors and assigns of the Parties.

In witness hereof, the parties have executed this Intergovernmental Agreement on the day and year first written above.

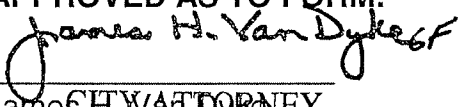
**TUALATIN VALLEY WATER DISTRICT**

By:   
Gregory DiLoreto  
Chief Executive Officer/AIC

**CITY OF PORTLAND**

\_\_\_\_\_  
David G. Shaff  
Portland Water Bureau  
Administrator

\_\_\_\_\_  
Date

APPROVED AS TO FORM  
APPROVED AS TO FORM:  
  
James H. Van Dyle  
CITY ATTORNEY  
City Attorney

4/19/13  
Date

**CITY OF TUALATIN**

By: \_\_\_\_\_  
Sherilyn Lombos,  
City Manager

## Exhibit 1, Scope of Services

### Background

Tualatin Valley Water District (TVWD), the City of Portland (Portland), and the City of Tualatin (Tualatin) have entered into an Intergovernmental Agreement to evaluate the design and construction of temporary pumping facilities to provide up to 20 million gallons per day at or near Portland's meter vault on the Washington County Supply Line in Beaverton Hillsdale Highway.

TVWD presently has sources of water from the City of Portland and the Joint Water Commission. Portland has its source of water from the Bull Run system and the Columbia South Shore Well Field. Tualatin is a wholesale water purchaser from Portland. Each party recognizes that there are mutual benefits to evaluate the capacity of emergency water supply from TVWD for TVWD, Portland and Tualatin in the event of supply limitations of the Portland system. TVWD has solicited proposals from consultants to conduct analysis and planning to evaluate capacity and design concepts for a temporary emergency pump station to allow TVWD to supply water to Portland and Tualatin from TVWD's Joint Water Commission source.

TVWD has entered into a contract with HDR, Inc. to provide engineering services to evaluate the ability of TVWD to provide emergency water supply to its own Metzger district and to Portland and Tualatin in the event of supply limitations of the TVWD or Portland system. The following tasks shall be completed:

### Task 1 – Preliminary Design.

**Activities:** HDR shall work with TVWD and the stakeholders to define possible failure modes and operating conditions under which the pump station will need to operate. Once these conditions are defined, HDR shall work with the TVWD to develop a preliminary design for the project that outlines the following:

- Hot tapping details
- Site improvements
- Materials of construction
- Pump performance requirements
- Pump drive type
- Pump selection, mounting and assembly details
- Trailer Criteria.
- Instrumentation and SCADA requirements
- Identify project improvements that require land owner acceptance/approval
- Identify ancillary equipment needed to assemble and start up the pump station during an emergency

- Preliminary information needed to define the project to prepare a detailed design for the equipment and material procurement and construction.

HDR shall develop a preliminary plan for project implementation including a schedule and proposed procurement packages. As part of the preliminary design process, HDR's work activities shall include a topographic survey of the site and development of a base map showing right of way boundaries and proposed easements. Survey shall include field locates for utilities (underground and overhead). Utilities will be shown on base map and plans as approximate for information purposes only. Topographic survey and mapping will include features, both man-made and natural, within the project area that are likely to impact design and construction. Survey will include field data to be used for preparing a civil base plan for the project with 1-foot contours; existing visible utilities, including manholes, catch basin, grates inlets, water valves, overhead wires with poles and anchors with ground clearances; surrounding culture such as signs, retaining walls, landscaping and trees, driveways, mailboxes, fences, and irrigation infrastructure; existing roadway features including pavement lanes, bike lanes, sidewalks and street signs, and other features.

In addition, an evaluation of various pump, driver and piping alternatives will be developed. The alternatives that will be considered include the following:

- One custom pump versus multiple off the shelf pumps
- Direct coupled engine driven pumps versus electric motor/generator set power with or without VFD .
- Trailer versus skid mounted pumps.
- Connection type and configuration – above ground piping, buried piping, pipe supports, and connection details.
- Flexibility opportunities for the pump station and alternative uses.
- Piping material selection including welded steel pipe, ductile iron pipe, high density polyethylene pipe and possible flexible tubing.
- The agenda for the meeting will consist of a table of potential opportunities or options to help guide the discussion and strategies for narrowing the options and provide a structure for decision making.
- Noise abatement.

Preliminary cost estimates will be developed for the three preferred options and presented in the alternative presentation workshop. A detailed opinion of probable construction cost will be developed for the preferred alternative.



**Meetings:** Up to two meetings/workshops are assumed as follows:

- Kickoff/project definition and criteria development workshop
- Alternative presentation, review and predesign workshop

**Assumptions:**

- Workshops will be four hours in length, attended by the project manager, technical advisor, and project engineer.
- Information regarding potential operating conditions will be identified prior to workshop 1.
- HDR will provide cost data and technical data to assist in decision making during the meetings.

**Deliverables:** Meeting summaries and memoranda outlining decisions reached regarding defining the project criteria, material selection, hot tapping requirements, site improvements, equipment selection, procurement procedures and mechanisms. An implementation plan, project schedule, locations of utilities that may present conflicts that need to be potholed for design, and opinion of probable construction cost will be included in a technical memorandum.

**Task 2 – Final Design – May be a Future Task**

**Task 3 – Material/Contractor Procurement – May be a Future Task**

**Task 4 – Construction Services – May be a Future Task**

**Task 5 – Testing, Startup, and Training – May be a Future Task**