

**EXHIBIT A****INTERGOVERNMENTAL AGREEMENT**

This Intergovernmental Agreement ("IGA") is effective upon day of its last signature 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 ("JWC"). 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.

TVWD and Tualatin wish to design and construct a 10 mgd emergency pump station to create an emergency water supply connection between TVWD's JWC water source and its Metzger Service Area and Tualatin.

TVWD believes that the station would best be located in an existing vault located near SW Beaverton Hillsdale Highway and SW Scholls Ferry Road. The vault currently houses piping and a meter owned by the City of Portland. The meter serves to measure water deliveries from the Portland system to the TVWD system under their wholesale water agreement.

TVWD has solicited a proposal from consultants to provide services for design and construction of a 10 mgd pump station that would connect to the water piping system at the Portland's meter vault.

The parties acknowledge that the Portland meter has not for some time accurately measured the flow of water from Portland to TVWD and should be replaced with a revised piping design and a new meter. In addition, the parties recognize that the proposed modifications to accommodate the temporary pumping facilities will affect the accuracy and calibration of the existing meter.

The parties would be mutually benefited if the design and construction of TVWD's and Tualatin's pump station were coordinated with and proceeded at the same time as piping modifications to allow installation of a more accurate meter.

TVWD and Tualatin must have Portland's permission to alter the piping in the vault.

The parties therefore enter this agreement to participate in and jointly fund the design of altered vault piping, temporary pumping facilities, and new meter facilities at the vault. It is currently anticipated that, at a minimum, the design will entail the installation of smaller pipe to hold the meter than currently is the case. It is also currently expected that pumping facilities will involve the use of temporary pumps, stored off-site, which shall be transported to the WCSL meter facility and connected using portable piping for operation if and when needed.

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. The parties shall negotiate and agree to a scope of work for a consultant to design all vault, pipe, pump, and meter facilities to accomplish their joint goals. If they agree to a scope of work, TVWD shall then negotiate a contract with a consultant, approved by all parties, to conduct the scope of work. Upon approval of the proposed contract and contract price by all parties, TVWD shall enter into a contract with the consultant for the work.
3. Implementation of Design Contract.
  - a. After preliminary engineering and evaluation of proposed modifications by the TVWD consultant acceptable to all parties, TVWD, Portland and Tualatin shall negotiate and seek to agree on the nature and general design of proposed facilities.
  - b. If the parties reach agreement on the nature and general design of modifications, TVWD shall direct its consultant to proceed to design. The parties shall regularly consult with each other and the TVWD consultant during the design process. At a minimum, all parties shall have full access to the consultant, consultant working papers, and design drafts and each party shall be provided full copies of 30%, 60%, and final design drawings and be given the opportunity to comment and consult thereon. Design shall not move from 30% to 60% or 60% to final without the agreement of all parties.
  - c. The parties agree that each shall pay a share of the design consultant expenses, with all shares adding to 100% of the costs.
    - TVWD and Tualatin shall pay all costs of design work related to the pump station and piping modifications required by the pump station.

- Portland shall pay the cost of design work related to meter installation and piping modification required for meter installation.
  - The parties shall share the costs tied to both purposes, based on percentages determined to be fair and equitable by TVWD's design consultant taking into account the parties to benefit by the consultant's work.
  - In all cases, allocations of individual or joint costs shall be made by the design consultant and shall not be subject to review or challenge by the parties.
- d. The TVWD design consultant shall be directed periodically to invoice TVWD for its work with invoices showing the respective shares of the parties as provided for in this Agreement.

TVWD shall invoice Portland and Tualatin for their respective shares as progress payment requests from TVWD's design consultant are received. Portland and Tualatin shall pay the amount of the invoice within 30 days of receipt of an invoice from TVWD. Tualatin and Portland shall not pay the consultant directly.

If there is a dispute of the amount due, Portland and Tualatin shall pay the undisputed amount and the disputed amount shall be resolved through Section 13 below.

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's name included in this Agreement. In no case shall Portland be obligated to pay more than \$xxxxx under this Agreement.

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

4. Next Steps. If all parties agree to final design of the pump and meter facilities, they shall in good faith endeavor thereafter to negotiate and enter a subsequent agreement for the joint funding and construction of the project as designed. Prior to entering into a subsequent agreement, all parties shall be required to follow their own council and procurement processes for further authority to enter into an agreement and authorize funding. No party, however, by entering into this Agreement is required or contractually bound to enter into such subsequent agreement.

5. Program and Project Managers. Stewart Davis of TVWD will be the program manager and responsible for all direction to the TVWD design consultant. Portland designates Stan VandeBergh as its project manager, and Tualatin designates Kaaren Hofmann as its project manager.
6. Compliance with Law. TVWD shall be solely responsible to comply with all state statutes and rules regarding the contract with the Consultant and the general contractor.
7. Documents. Each party shall provide water system related documents and information as reasonably necessary in order for the TVWD design consultant to perform its work hereunder. Each party shall receive any interim, draft and final reports or recommendations produced by the TVWD design consultant, and each party may submit, within a reasonable time, comments or recommendations on the design consultant 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 the TVWD design consultant under its contract with TVWD.
8. 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 Tualatin and TVWD as part of this 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 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.
9. 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.
10. 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' negligence in connection with the performance of this Agreement.

11. Insurance. Contract documents with the TVWD's design consultant shall require that the consultant obtain, prior to beginning any work, and shall maintain in full force and effect for the term of the contract at the design consultant'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 in the amounts not less than what TVWD requires for work similar to the work being performed under TVWD's contract with the design consultant. The named insured on any policy shall be the TVWD design consultant, the City of Portland, City of Tualatin, and Tualatin Valley Water District. The TVWD design consultant shall name City of Portland, City of Tualatin and TVWD their elected appointed officials, officers, agents, employees and volunteers as additional insureds. 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 do business in the State of Oregon. The TVWD design consultant shall provide TVWD written notice within 30 days of cancellation or material modification of the insurance contract at the addresses listed below. The TVWD design consultant 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. The TVWD design consultant shall be financially responsible for all pertinent deductibles, self-insured retention and or self-insurance used to satisfy these requirements.
12. Term. This Agreement shall expire upon approval by all parties of final design of the facilities or November 30, 2014, whichever occurs first. This Agreement may be extended or terminated by the parties by mutual agreement. Any party may terminate this Agreement upon its declaration that, after good faith negotiations with all other parties, it is unable or unwilling to grant interim approvals or reach interim agreements required herein (for instance, approval of scope of work, contract documents, design stages). Upon any such termination, each party shall each pay its respective share of the costs of consultant work completed prior to termination. The party terminating the Agreement shall be excused from payment for any TVWD's design consultant's work or any other work associated with this project and occurring after it terminates this Agreement.
13. Breach, Default and Disputes. If any Party breaches any covenant hereunder, any non-breaching party may seek all remedies available at law or equity or may revoke this agreement upon giving thirty (30) days'

written notice of the alleged 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: Upon notice of a desire for dispute resolution the following process shall apply:

- A. The Chief Executive Officer of TVWD, the Administrator of the Portland Water Bureau, and the City Manager of Tualatin shall meet in an effort to resolve the matter within 30 days of the notice.
- 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.

14. Notices. Notices shall be written and sent by first class mail, postage prepaid, to the following addresses:

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

Stan VandeBergh, P.E.  
City of Portland Water Bureau  
1120 Southwest 5th Ave., #600 Portland, OR 9720

Kaaren Hofmann, P.E.  
Public Works Director  
City of Tualatin  
8777 Southwest Burnham Street  
Tigard, OR 97223

15. 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: \_\_\_\_\_  
Mark Knudson,  
Chief Executive Officer

**CITY OF PORTLAND**

By: \_\_\_\_\_  
David G. Shaff  
Administrator, Water Bureau

Approved As To Form:

\_\_\_\_\_  
City Attorney, City of Portland

**CITY OF TUALATIN**

By: \_\_\_\_\_  
Sherilynn Loumbos,  
City Manager

Approved As To Legal Form:

\_\_\_\_\_  
City Attorney, City of Tualatin