

CITY OF PORTLAND INTERGOVERNMENTAL AGREEMENT NO.: _____

This Intergovernmental Agreement (**Agreement**) is entered into by and between the City of Portland, Oregon, acting through its Water Bureau (**City** or **PWB**), and the City of Sandy (**Sandy**). The City and Sandy will be referred to collectively as **Parties** and singularly as **Party**. This Agreement is authorized pursuant to ORS 190.010.

RECITALS

- A.** To satisfy a Bilateral Compliance Agreement with the Oregon Health Authority, PWB must design and construct the Bull Run Filtration Projects, which includes a filtration facility (**Facility Project**) and pipelines (**Pipeline Project**) (together, the **Filtration Projects**), depicted in **Exhibit A (Filtration Projects Map)** attached and incorporated by reference. Construction began in 2024 and construction is anticipated to be complete in 2028.
- B.** The Filtration Projects are sited, in part, on tax lots R994220980 and R994220820 (**City Parcels**). Sandy will have access and maintenance easements on the City Parcels for a pump station, transmission pipeline, and fiber conduits. These facilities are critical to Sandy’s ability to serve its customers.
- C.** Under two Water Sales Agreements executed by the City and Sandy, attached as **Exhibit B-1 (Water Sales Agreement, effective November 3, 2008 – June 30, 2026)** and **Exhibit B-2 (Water Sales Agreement, effective July 1, 2026 – June 30, 2056)**, attached and incorporated by reference.
- D.** The Parties wish to identify and address impacts to Sandy’s infrastructure, and operations and maintenance activities, during the design and construction of the Filtration Projects. The Parties further wish to memorialize their responsibilities during the design and construction of the Filtration Projects. See **Exhibit C (Statement of Work)**, attached and incorporated by reference.

NOW, THEREFORE, THE PARTIES AGREE:

1. SUMMARY STATEMENT OF WORK

As detailed in Exhibit C, PWB and Sandy will collaborate by reviewing design and construction documents and coordinating efforts during construction to minimize construction impacts to both Parties. The Parties will also address temporary and permanent impacts to existing PWB and Sandy assets by developing utility protection plans, determining responsibility for design and construction for Project elements, evaluating Sandy and PWB system constraints, developing easement and access agreements, and related activities. Cumulatively, these efforts are the Project (**Project**).

2. TERM

The effective date of this Agreement is June 1, 2024. The expiration date of this Agreement is June 30, 2029.

3. COMPENSATION

- A. The City will reimburse Sandy for costs identified in Exhibit C that are incurred by Sandy to support the Project. The City has authorized a total not to exceed amount of \$49,999 to fund the services required to be performed by the City under this Agreement. Funding of \$49,999 is available beginning in the Fiscal Year 2024-25. The City's Fiscal Year is defined as July 1 through June 30 of the following year. Funds will be requested in future budget for ongoing services.
- B. Funding for this Agreement will only be disbursed upon the City's approval. In the event this Agreement is terminated all unexpended funds will be returned to the City within sixty (60) calendar days of said termination.
- C. The City's policy is to pay its invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices, Sandy will execute the City's standard ACH Vendor Payment Authorization Agreement which is available on the City's website at <https://www.portlandoregon.gov/brfs/article/658568>.

Upon verification of the data provided, the Payment Authorization Agreement will authorize the City to deposit payment for services rendered directly into Sandy accounts with financial institutions. All payments will be in United States currency. Payment of any invoice, however, does not preclude the City from later determining that an error in payment was made and from withholding the disputed sum from the next monthly payment until the dispute is resolved.

- D. By the 15th of the month following the end of the previous month after the effective date, Sandy will submit to the City an invoice for work performed during the previous month. Each invoice will identify the tasks that have been completed per the terms of this Agreement.
- E. Invoices will only be submitted to the Portland Water Bureau Finance Office electronically. Email address is as follows: wbaps@portlandoregon.gov
- F. Sandy will fully cooperate with a City Audit of the records at any time. Sandy will also fully cooperate with an audit to account for all expenses if necessary.
- G. The City will pay all amounts to which no dispute exists within twenty (20) business days of receipt of the invoice. Payment of any invoice, however, does not preclude the City from later determining that an error in payment was made and from withholding the disputed sum from the next progress payment until the dispute is resolved. Sandy will make full payment to its subcontractors within ten (10) business days following receipt of any payment made by the City to Sandy.

4. NOTICES

Unless otherwise stated in this Agreement, the designees named below will be the contact for all activities performed under this Agreement.

Sandy (Agreement Manager):

PWB (Agreement Manager):

Jennifer Coker, Public Works Director
39250 Pioneer Blvd.
Sandy, OR 97055
503-668-6927
jcoker@ci.sandy.or.us

David Peters, Engineering Manager
1120 SW 5th Ave Suite 600
Portland, OR 97227
503-823-2003
david.peters@portlandoregon.gov

5. TERMINATION

This Agreement may be terminated at any time by mutual agreement of the Parties. The City on thirty (30) calendar days written notice may terminate this Agreement. Sandy on ninety (90) calendar days written notice may terminate this Agreement.

6. NON-DISCRIMINATION

In carrying out activities under this Agreement, neither Party will discriminate against any employee or applicant for employment because of race, color, religion, sex, age handicap, familial status, or national origin. Each Party will take affirmative actions to ensure that applicants for employment are employed and that employees are treated during employment, without regard to their race, color, religion, sex, age, handicap, familial status, or national origin. Such action will include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff of termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

7. ACCESS TO RECORDS

Both Parties and their duly authorized representatives will have access to the books, documents, and records which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcript.

8. INDEMNIFICATION

Subject to the conditions and limitations of the Oregon Constitution, Article XI, Section 9, and Oregon Tort Claims Act, ORS 30.260 through 30.300, Sandy will indemnify, defend, and hold harmless the City from and against all liability, loss and costs arising out of or resulting from the negligent or intentionally wrongful acts of Sandy, its officers, employees, and agents in the performance of this Agreement.

Subject to the conditions and limitations of the Oregon Constitution, Article XI, Section 9, and the Oregon Tort Claims Act (ORS 30.260 to 30.300) the City will indemnify, defend, and hold harmless the Sandy from and against all liability, loss, and costs arising out of or resulting from the negligent or intentionally wrongful acts of City, its officers, employees, and agents in the performance of this Agreement.

The indemnity obligations under this clause will survive the termination or expiration of this Agreement.

9. INSURANCE

Sandy is self-insured through the State Insurance Fund, administered by Risk Management Division, Department of Administrative Services. Each of the Parties will maintain, throughout the duration of this Agreement, either a program of self- insurance or general liability insurance with limits not less than the then-current liability limits applicable to cities under the Oregon Tort Claims Act. All

personnel, officers, and employees of either Party, acting within the scope of their employment, are covered by ORS 30.270. The Parties are each a subject employer under the Oregon Workers' Compensation law in compliance with ORS 656.017 and will maintain workers' compensation insurance through the duration of this Agreement.

10. SUBCONTRACTING AND ASSIGNMENT

Sandy will not subcontract its work under this Agreement, except as identified in this Agreement or attached Statement of Work, without the written consent of the City. Sandy will assure that all subcontractors used to perform the services under this Agreement meet the City's Codes pertaining to permits, workmen's compensation, licensing, and all other requirements.

11. DISPUTES

The signatories to this Agreement will expend their best efforts to amicably resolve any dispute that may arise under this Agreement. Any dispute that the signatories are unable to resolve will be submitted to the Director of the Sandy or their designee and the City of Portland Water Bureau Director or their designee for resolution.

12. OREGON LAWS AND FORUM

This Agreement will be construed according to the laws of the State of Oregon. Any litigation between the PWB and Sandy arising under this Agreement or out of work performed under this Agreement will occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof and if in the federal Courts, in the United States District Court for the State of Oregon.

13. FUNDS AVAILABLE AND AUTHORIZED

The City certifies that at the time the Agreement is written that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within current appropriation.

14. SEVERABILITY

If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

15. COMPLIANCE WITH APPLICABLE LAW

Both Parties will comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable under this Agreement. Without limiting the generality of the foregoing, the Parties expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) Oregon's Public Records Act; (iv) the Americans with Disabilities Act of 1990 and ORS 659A.142; (v) all regulations and administrative rules established pursuant to the foregoing laws; (vi) any applicable sections of ORS Chapter 279, and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

16. FORCE MAJEURE

Neither Party will be held responsible for delay or default caused by fire, riot, acts of God and war which are beyond its reasonable control. The affected Party will, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

17. NO THIRD-PARTY BENEFICIARY

The PWB and Sandy are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing contained in this Agreement gives or will be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

18. MERGER CLAUSE

This Agreement constitutes the entire agreement between the Parties. No waiver, consent, modification or change of terms of this Agreement will bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

19. AMENDMENTS

The City and Sandy may amend this Agreement at any time only by written amendment executed by the City and Sandy. The City of Portland Water Bureau Director is authorized to approve amendments for the City to this Agreement that do not increase the total Agreement amount. Sandy will submit a written request to the City's Project Manager prior to any amendments to the Agreement. Any amendment to the Agreement will require the signature of both Parties approving authorities.

20. OWNERSHIP OF DOCUMENTS

- A. Except as described below, the PWB will own all work product.
- B. The PWB and Sandy will jointly own any and all final drawings, plans, documents, and any other final materials produced in connection with this Agreement for assets and facilities to be owned and operated by Sandy.
- C. Sandy upon request by the PWB will provide the City copies of the materials referred to above, including any electronic files containing the materials.
- D. The Parties have executed a Mutual Confidentiality Agreement related to the Project's confidential information.

21. SEVERABILITY/SURVIVAL

If any of the provisions contained in this Agreement are held unconstitutional or unenforceable, the enforceability of the remaining provisions will not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest will survive the termination of this Agreement for any cause.

22. CONFLICTS OF INTEREST

No City officer or employee, during their tenure or for one (1) year thereafter, will have any interest, direct, or indirect, in this Agreement or the proceeds thereof. No board of director member or employee of Sandy, during their tenure or for one (1) year thereafter, will have any direct financial interest in the Agreement or the proceeds thereof.

23. CITY AUDITS

City, either directly or through a designated representative, may conduct financial and performance audits of Sandy's records related to this Agreement at any time in the course of the Agreement and during a six (6) year records retention period. Audits will be conducted in accordance with generally

accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States Government Accountability Office.

24. CONTRIBUTION

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (**Third-Party Claim**) against a Party (**Notified Party**) with respect to which the other Party (**Other Party**) may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third-Party Claim. Either Party is entitled to participate in the defense of a Third-Party Claim, and to defend a Third-Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense, and settlement of the Third-Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third-Party Claim.

With respect to a Third-Party Claim for which Sandy is jointly liable with the City (or would be if joined in the Third-Party Claim), Sandy will contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the City in such proportion as is appropriate to reflect the relative fault of Sandy in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Sandy on the one hand and of the City on the other hand will be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines, or settlement amounts. Sandy contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the Sandy had sole liability in the proceeding.

25. COUNTERPARTS

This Agreement may be signed in two (2) or more counterparts, each of which will be deemed an original, and which, when taken together, will constitute one and the same Agreement. The Parties agree the City and Sandy may conduct this transaction, including any Agreement amendments, by electronic means, including the use of electronic signatures.

CITY OF PORTLAND INTERGOVERNMENTAL AGREEMENT NO.: _____

I, the undersigned, agree to the terms and conditions outlined in this Agreement:

City of Portland

By: _____ Date: _____

Priya Dhanapal, P.E.
Deputy City Administrator, Public Works Service Area

Approved as to Form:

By: _____ Date: _____

Office of City Attorney

City of Sandy

By: _____ Date: _____

Name: _____

Title: _____