CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 12- 36

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL COOPERATIVE AGREEMENT REGARDING AN EMERGENCY WATER SUPPLY (INTERTIE)

WHEREAS, Lake Oswego's water system is connected to the water systems of the South Fork Water Board and West Linn via an intertie, and under an emergency water supply agreement, these three entities have supplied water to one another during emergencies; and

WHEREAS, the cities of Lake Oswego and Tigard entered into a water partnership agreement whereby the two cities would work together to develop a new water system that will meet both communities' future water needs; and

WHEREAS, under the water partnership agreement, Tigard obtained an ownership interest in the intertie used to provide emergency water; and

WHEREAS, as an owner in the intertie, Tigard needs to be included in the emergency water supply agreement; and

WHEREAS, water partnership plans include an expansion of Lake Oswego's existing water treatment plant in West Linn, and the West Linn Planning Commission suggested the emergency water supply agreement be updated; and

WHEREAS, an emergency water supply agreement has been developed and is attached as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: On behalf of the Tigard City Council, the mayor is authorized to execute the emergency water supply agreement, entitled the *Intergovernmental Cooperative Agreement for Water System Intertie between the South Fork Water Board, the City of Lake Oswego, the City of West Linn, and the City of Tigard* (Exhibit A).

SECTION 2: This resolution is effective immediately upon passage.

PASSED: This 25th day of September 2012.

Mayor ~~-~~ City of Tigard
Council President

ATTEST:

City Recorder - City of Tigard

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Exhibit A

INTERGOVERNMENTAL
COOPERATIVE AGREEMENT
FOR
WATER SYSTEM INTERTIE
BETWEEN THE
SOUTH FORK WATER BOARD, THE CITY OF LAKE OSWEGO, THE CITY OF WEST LINN, AND THE CITY OF TIGARD

This Agreement is made and entered into by and between the South Fork Water Board, an intergovernmental entity created pursuant to ORS Chapter 190, serving as a water supply agency and jointly owned and operated by the Cities of Oregon City and West Linn, hereinafter referred to as "Board," and the City of Lake Oswego, an Oregon municipal corporation, hereinafter referred to as "Lake Oswego," and the City of West Linn, an Oregon municipal corporation, hereinafter referred to as "West Linn," and the City of Tigard, an Oregon Municipal Corporation, hereinafter referred to as "Tigard", all hereinafter collectively referred to as the "Parties."

RECITALS

The Parties agree upon the following recitals:

1. WHEREAS, the Parties acknowledge that the Board, Lake Oswego, and West Linn entered into an intergovernmental cooperative agreement in 1984 to provide for the construction, operation and maintenance of an emergency water system intertie between the water supply system of the Board and West Linn and the water supply system of Lake Oswego; and

2. WHEREAS, the facilities as described in the 1984 agreement, which are located near the intersection of Old River Road and Kenthorpe Way in West Linn, were constructed and the intertie became operable in that same year, and

3. WHEREAS, the intertie has been utilized periodically since 1984 during emergencies to provide emergency water supply between the Board, Lake Oswego, and West Linn; and

4. WHEREAS, the planning for the 1984 intertie contemplated future construction of an intertie water pump station in the vicinity of original intertie; and

5. WHEREAS, West Linn has constructed the previously contemplated pump station on Old River Road near its intersection with Kenthorpe Way; and

6. WHEREAS, the intertie pump station and appurtenant facilities provide benefit to all of the Parties to this agreement; and

7. WHEREAS, the Board, Lake Oswego, and West Linn contributed to the cost of the pump station and appurtenant facilities; and

8. WHEREAS, Lake Oswego and Tigard have entered into an intergovernmental cooperative agreement that conveys an ownership interest in existing water supply facilities necessary to supply emergency water to West Linn and Board, and provides for construction of new water

supply facilities including an expanded water treatment plant and raw and finished water pipelines to supply their respective long term water needs; and

9. WHEREAS, the changes in ownership, anticipated facilities expansion, and water allocation formulas called for in the intergovernmental agreement between Lake Oswego and Tigard necessitate amendment of the existing water system intertie agreement; and

10. WHEREAS, through expansion of Lake Oswego's existing water supply system to its ultimate treatment capacity of 38 million gallons per day (mgd), Lake Oswego and Tigard can continue to provide West Linn and Board with redundant water supply facilities and a reliable source of emergency water supply sufficient to meet West Linn's average day demand of 4 mgd through at least 2041; and

11. WHEREAS, the Parties agree that other options for West Linn to provide its citizens with a redundant and reliable water supply system for emergency water supply needs are significantly more expensive and therefore agree it is in the best interests of their respective communities to work together in good faith to address critical, local water infrastructure needs in a coordinated and collaborative manner for mutual benefit; and

12. WHEREAS, provided that expansion of Lake Oswego's existing water supply system occurs, West Linn ratepayers will avoid $11.6 million in water system capital construction needs, and each Party will realize other benefits including mitigating environmental impacts from duplicative infrastructure projects, flexibility in system operations for emergency and non-emergency events, and economies not otherwise achieved through individual actions; and

13. WHEREAS, the Parties acknowledge that by entering into this Agreement the public health, safety and welfare of their citizens are protected and enhanced in a fiscally responsible manner; and

14. WHEREAS, the Parties acknowledge that they have authority to execute this cooperative intergovernmental agreement pursuant to the terms of their respective municipal charters and pursuant to ORS 190.010;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed by and between the Parties hereto as follows:

1. "Water Supply Facilities" Defined. As used herein, the term "water supply facilities" means river intake, raw and finished pumping facilities, water treatment facilities, water storage facilities, and all other infrastructure used in conjunction with the appropriation, treatment, storage or transmission of the Parties' water.

2. "Emergency Condition" Defined. An "emergency condition" is an occurrence created by a failure of the water supply facilities of the Board, Lake Oswego, West Linn, or Tigard, or the occurrence

of an event which jeopardizes the Parties' water quality, whereby insufficient supply to any of the water customers of the Parties could threaten the health or safety of those customers. Such failure includes failure or interruption in the operation of river intakes, raw and finished water pumping facilities, water treatment facilities, raw and finished water pipelines, reservoirs, and appurtenant facilities. Emergency conditions shall not include situations involving loss of water pressure or diminution in water volume in a water distribution system during periods of high demand if the system remains in a normal operational mode, and shall not include scheduled repairs or maintenance or reductions in water availability due to regulatory action.

3. Utilization of Water Intertie. The water system intertie may be utilized by the mutual consent of the executive officers of each of the Parties, or their designees. Decisions regarding the use of the intertie may be reviewed by the city councils of each of the Parties at the discretion of each city council.

4. Location and Description of Water System Intertie. The location of the water system intertie is in the vicinity of the intersection of Kenthorpe and Old River Road in West Linn. The intersection connection that was established and constructed in 1984 under the above-referenced prior agreement consists of an 18-inch intertie main approximately 800 feet in length and related appurtenance that are located on Old River Road between Mapleton Drive and Kenthorpe Way. This pipeline connects West Linn's 18-inch diameter transmission main located on Highway 43 to Lake Oswego's 24-inch diameter transmission main located at the intersection of Kenthorpe Way and Old River Road. In 2000, West Linn constructed an intertie booster pump station on property located on the west side of Old River Road between Kenthorpe and Mapleton Drive. The property is located between Old River Road and Highway 43. The pump station connects to, and utilizes, the 18-inch intertie main on Old River Road. The pump station allows the intertie to be used on a continuous and automatically controlled basis in both directions of supply, i.e. Board and West Linn to Lake Oswego and Lake Oswego and Tigard to West Linn and Board. The pump station includes flow, pressure control, metering and telemetry facilities, and a connection for providing emergency power supply. The pump station, along with the facilities and appurtenances associated with it, as well as the facilities previously constructed in 1984, constitute the water system intertie that is the subject of this agreement.

5. Modifications to Water System Intertie. West Linn, as the project owner, undertook and completed the water system intertie pump station project. West Linn has maintained accurate cost accounting records relating to the project. The Board agreed to contribute $100,000.00 to the project cost, which shall be payable in accordance with a payment schedule not to exceed two years. Lake Oswego agreed to contribute to the project a sum equal to 50% of the project cost of the facilities that benefit Lake Oswego, but not to exceed $65,000.00.These facilities are defined as the piping, valves, vaults, metering, instrumentation and control systems, and appurtenant facilities that are used to provide water supply to Lake Oswego from West Linn and the Board. The estimated project cost of these facilities which benefit Lake Oswego is $130,000. "Project Cost" as used in this paragraph is defined as the final construction cost of the facilities plus the prorated share of the engineering costs for project which include pre-design, design, bidding and award, construction management, permits and approvals, operation and maintenance manuals, and intertie operating plan. Project costs do not include property acquisition costs, contractor claims, litigation costs or other extraordinary costs related to the project. Upon completion of the project, West Linn will provide documentation to Lake Oswego for the project costs incurred. Lake Oswego agrees to pay West Linn its contribution toward the

cost of such facilities in accordance with a payment schedule not to exceed two years from the date of this agreement.

6. Title to Intertie Facilities. The title to the water system intertie facilities as described above in Paragraph 4 and the obligation to insure them shall be in the name of West Linn. Title to the property occupied by the intertie pump station will be in the name of West Linn.

7. Method of Water Supply Through Intertie. Supply to Lake Oswego and Tigard from the Board and West Linn will be by gravity through the piping, metering, flow and pressure control facilities associated with the intertie pump station. Supply to West Linn and the Board from Lake Oswego and Tigard will be accomplished by pumping or gravity from the Lake Oswego-Tigard water system through the intertie pump station into West Linn's system. Instrumentation, control and telemetry systems will be installed in the station and the station will be under the primary control of West Linn. Lake Oswego has installed additional instrumentation, control and telemetry systems that will provide for pump station status indication and additional control functions. West Linn will prepare an operating plan for the intertie pump station and appurtenant facilities and provide copies of same to the Board and Lake Oswego.

8. Quantity of Water to be Supplied. Upon agreement between the Parties to make use of the intertie pursuant to Paragraph 3 of this Agreement, the supplying water shall endeavor to supply the maximum feasible quantity of water requested by the receiving Party, and take all reasonable actions necessary to accomplish the same, so long as such actions are not detrimental to the operation of the supplying Party's own water system. Provided that Lake Oswego's supply facilities are expanded to a treatment capacity of 38 million gallons per day, Lake Oswego and Tigard can provide West Linn and Board with redundant water supply facilities and a reliable source of emergency water supply sufficient to meet West Linn's average day demand of 4 mgd through at least 2041.

9. Cost of Water to be Supplied. The Parties agree to pay for all water provided through the intertie at a rate which is the greater of:

    a. The cost, then being paid by West Linn to the Board for wholesale water; or

    b. The cost to Lake Oswego and Tigard to produce and deliver water to the inlet side of the intertie pump station, which in the first year of operation of the expanded treatment plant is estimated to be $0.95 per 100 cubic feet.

The volume of water delivered shall be measured by the meter installed at the intertie pump station. The Parties shall have the right at any time to review rates for water supplied and make such adjustments to the cost of water provided, as they deem necessary and by mutual agreement of all Parties. In the event it is necessary for a Party supplying water through the intertie to obtain additional water from a water provider not party to this agreement, the water rate charged to the Party receiving water under this agreement shall be the water rate charged to the supplying Party by the non-party water provider. The Parties further agree that water utilized for periodic testing and exercising of the facilities will be furnished between the Parties

without cost. In addition to the rate charged for water, the Parties by mutual agreement reserve the right to impose wheeling charges.

10. Operation and Maintenance Costs. The Parties agree that West Linn, as the owner of the intertie facilities, will be responsible for and will pay for the normal day-to-day operation and maintenance costs of the facilities.

11. Repairs, Renewals, Replacements, Upgrading and Modifications. The Parties agree that West Linn, as the owner of the intertie facilities, will be responsible for scheduling, contracting for and implementing any repairs, renewals, replacements, upgrading and modifications that may be required in the future to maintain or increase the function of the facilities.

    a. Cost of Repairs: West Linn shall be responsible for the cost of all repairs, except that Lake Oswego and Tigard agrees to pay 50% of the cost of any repairs necessary to those facilities which benefit Lake Oswego and Tigard. Those facilities are defined as the piping, valves, vaults, metering, instrumentation and control systems, and appurtenant facilities that are used to provide water to Lake Oswego and Tigard from West Linn and the Board.

    b. Cost of Capital Improvements. The cost of any capital improvements or improvements which increase the function of the facilities will be shared in an equitable manner, based upon the benefit to be derived from each Party from each particular period.

12. Access to Water System Intertie Facilities. The Parties and their employees shall have access to the water system intertie facilities.

13. Agreement Not to Resell Water Without Consent. Except for existing wholesale customers or existing mutual aid agreements, the Parties agree that they will not resell water supplied under the terms of this agreement without prior written consent of all Parties.

14. Supersedes Prior Agreement. The Parties agree that this is agreement supersedes and replaces the prior agreement executed in October and November, 2003.

15. Amendment Provisions. The terms of this agreement may be amended by mutual agreement of the Parties. Any amendments shall be in writing, shall refer specifically to this agreement, and shall be executed by the Parties.

16. Termination of Agreement. This agreement shall continue in effect until terminated by any Party with written notice of such intent to terminate provided to the other Parties. Notice to terminate must be provided at least 36 months prior to the effective date of termination. Termination of this agreement shall not affect ownership status of the water system intertie facilities hereinabove described.

17. Written Notices Addresses. All written notices required under this agreement shall be sent to:

South Fork Water Board: General Manager
South Fork Water Board

15962 S. Hunter Avenue
Oregon City, Oregon 97045

City of Lake Oswego:

City Manager
City of Lake Oswego
P.O. Box 369
Lake Oswego, Oregon 97034

City of West Linn:

City Manager
City of West Linn
22500 Salamo Road
West Linn, Oregon 97068

City of Tigard

City Manager
City of Tigard
13125 SW Hall Blvd
Tigard, Oregon 97223

18. Dispute Resolution: If a dispute arises between the parties regarding this Agreement, the Parties shall attempt to resolve the dispute through the following steps:

Step One (Negotiation)

The Manager or other persons designated by each of the disputing Parties will negotiate on behalf of the entity they represent. The nature of the dispute shall be reduced to writing and shall be presented to each Manager, who shall then meet and attempt to resolve the issue. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by each Manager and ratified by their respective Board or Council, which shall then be binding upon the Parties.

Step Two (Mediation)

If the dispute cannot be resolved within thirty (30) days at Step One, the parties shall submit the matter to non-binding mediation. The Parties shall attempt to agree on a mediator. If they cannot agree, the Parties shall request a list of five (5) mediators form the Presiding Judge of the Clackamas County Circuit Court. The Parties will attempt to mutually agree on a mediator from the list provided, but if they cannot agree, the mediator will be selected by the Presiding Judge of Clackamas County Circuit Court. The cost of mediator shall be borne equally between the Parties, but each Party shall otherwise be responsible for its own costs and fees therefore. If the issue is resolved at this step, a written determination of such resolution shall be signed by each Manager and ratified by their respective Board or Council.

Step Three (Arbitration)

If the Parties are unsuccessful at Steps One and Two, the dispute shall be resolved by binding arbitration proceedings pursuant to ORS Chapter 36. The Parties shall follow the same process

IN WITNESS WHEREOF, the Parties have set their hands and affixed their seals as of the date and year hereinabove written.

Board has acted in this matter pursuant to Resolution No. _____ adopted on the _____ day of _____ , 2012.

Lake Oswego has acted in this matter pursuant to Resolution No._____ adopted on the _____ day of _____ , 2012.

West Linn has acted in this matter pursuant to Resolution No._____ adopted on the _____ day of _____ , 2012.

Tigard has acted in this matter pursuant to Resolution No. _____ adopted on the _____ day of _____, 2012.

South Fork Water Board,
by and through its officials

By: _____
Doug Neeley, Vice Chair

APPROVED AS TO FORM

By: _____
Chris Crean, Attorney

City of Lake Oswego,
by and through its officials

By: _____
Jack D. Hoffman, Mayor

APPROVED AS TO FORM

By: _____
David Powell, City Attorney

Attest: _____
Catherine Schneider, City Recorder

City of West Linn,
by and through its officials

By: _____
Jon Kovash, Mayor

APPROVED AS TO FORM

By: _____
Pam Beery, City Attorney

Attest: _____
Kathy Mollusky, City Recorder

City of Tigard
by and through its officials

by: _____
Craig Dirksen, Mayor

APPROVED AS TO FORM

By: _____
Tim Ramis, Attorney

Attest: _____
Cathy Wheatley, City Recorder