

**THIRD AMENDMENT TO INTERGOVERNMENTAL AGREEMENT
REGARDING WATER SUPPLY FACILITIES, DESIGN, CONSTRUCTION, AND
OPERATION**

THIS THIRD AMENDMENT to Intergovernmental Agreement Regarding Water Supply Facilities, Design, Construction and Operation (Third Amendment) is effective this _____ day of _____ 2013, by and between the City of Lake Oswego (Lake Oswego) an Oregon municipal corporation, and the City of Tigard (Tigard), an Oregon municipal corporation. Lake Oswego and Tigard may also be referred to individually herein as a "Party" and collectively as "Parties."

Recitals

WHEREAS, on August 6, 2008 the Parties executed an Intergovernmental Agreement Regarding Water Supply Facilities, Design, Construction and Operation (Agreement); and

WHEREAS, since the execution of the original Agreement, the scope of the Project under the Agreement has changed from beginning with an "Initial Expansion" of Supply Facilities to provide Capacity of 32 million gallons of water per day (mgd), to instead encompass the full contemplated "Long Term Expansion," with a Capacity of 38 mgd; and

WHEREAS, the Parties have concluded that it is in the best interest of both to adjust the allocation of Capacity from the expanded water supply facilities to transfer 4 mgd of Capacity from Lake Oswego to Tigard, resulting in 20 mgd being allocated to Lake Oswego and 18 mgd being allocated to Tigard; and

WHEREAS, the shift in allocation, plus the addition of Mapleton Drive properties as assets under the Agreement and correction of original "buy-in" calculations, necessitates a payment from the City of Tigard to the City of Lake Oswego based on new costs share applied to costs paid by Lake Oswego on the 4mgd to date and the additional "buy-in" amount for the Mapleton Drive properties; and

WHEREAS, Exhibit 6 to the Agreement outlining Tigard's buy-in costs, and Exhibit 7 to the Agreement setting forth an allocation of system improvement costs to the parties, require adjustments reflecting the changes described in these recitals; and

WHEREAS, the Parties desire to expedite the timeframe for reviewing the Agreement to consider whether changes are necessary or desirable to reflect the transition from an agreement regarding construction to an agreement regarding long term operations;

NOW, THEREFORE, THE PARTIES AGREE TO THIS THIRD AMENDMENT AS FOLLOWS:

Section 1. Updating References and Eliminating Inconsistencies. The Agreement is amended to refer to a single Expansion having 38 mgd Capacity, in place of all references to an Initial Expansion or a Long Term Expansion.

Section 2. Allocation of Capacity. The Agreement is amended to adjust any statements of allocations of Capacity to state an allocation of 20 mgd to Lake Oswego and 18 mgd to Tigard. Specifically, and without limiting the foregoing, Section 4.3 of the Agreement is amended to read as follows:

4.3 Allocation of Capacity

At the completion of the Expansion, Tigard's allocation of Capacity shall be 18 million gallons of water per day, and Lake Oswego's allocation shall be 20 million gallons per day.

Section 3. Payment. Within 60 days following the execution of this Third Amendment, Tigard shall pay Lake Oswego the sum of Five Million One Hundred Thirty One Thousand Three Hundred Ninety Dollars (\$5,131,390), consisting of \$1,272,846 as an additional "buy-in" amount that results from adding the Mapleton Properties to the Agreement assets and correcting original buy-in calculations, plus \$3,858,544 to reimburse Lake Oswego for costs paid to date by reason of the 4 mgd of Capacity that is transferred to Tigard pursuant to Section 2 of this Third Amendment.

Section 4. Sales to Others. Article XI of the Agreement is amended to read as follows:

Article XI Sales to Others

In addition to the Existing Wholesale Customers, Retail Customers of any Party, existing mutual aid agreements, or extension of service to service areas identified in the Carollo Report, either Party may contract for the sale or use of water within that Party's allocation of Capacity to any other person, provided that the contract is on a surplus basis. Any additional sale of water contracts that are not on a surplus basis, or any other contracts for sale or use of the Supply Facilities, shall require the approval of the other Party and compliance with the terms of this Agreement. Any revenues derived from the sale of water to another entity shall be paid to the Managing Agency. Net proceeds from such sales shall be credited back to the Parties based on a method as mutually agreed. Net proceeds shall be those proceeds remaining after expenses, renewals and replacements and contingencies are paid.

Section 5. Modifications to Governance and Management Structure. Section 15.1 of the Agreement is amended to read as follows:

15.1 Modification to Agreement

Within one year after approval of this amendment, the Oversight Committee shall undertake a review of all agreements to date to consider any modifications to the terms and conditions of this Agreement that may be necessary or desirable, including any modifications needed to transition from an agreement regarding construction to an agreement regarding long term operations. Matters that may be considered include, but are not limited to, changes in ownership, water rights limitations, conditions of approval and legal settlements, governance and management structure. At the recommendation of the Oversight Committee, the Councils for the parties may consider:

15.1.1 Modification of the existing Agreement(s);

15.1.2 Replacement of existing Agreement(s) with a new Agreement:

15.1.3 Creation of a Supply Agency under ORS Chapter 190.

Section 6. Revision of Exhibits. Exhibit 6 (Determination of Tigard Buy-In) and Exhibit 7 (Allocation of System Improvement Costs to the Parties) are revised to read as set forth in attached Exhibits 6 and 7.

Section 7. Entire Agreement. Except a specifically amended by this Third Amendment, the Agreement dated August 6, 2008 as subsequently amended by the first Amendment and the Second Amendment remains in full force and effect.

IN WITNESS WHEREOF the Parties have dated and signed this Agreement

City of Lake Oswego

City of Tigard

Mayor Dated

Mayor Dated

ATTEST:

ATTEST:

City Recorder Dated

City Recorder Dated

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney Dated

City Attorney Dated