

DRAFT KC Agreement

September 4, 2013

Intergovernmental Agreement Regarding Water System Ownership and Water Service

This Intergovernmental Agreement Regarding Water System Ownership and Water Service (Agreement) is made by and between the City of Tigard, a municipal corporation of the State of Oregon (Tigard) and the City of King City, a municipal corporation of the State of Oregon (King City).

RECITALS

WHEREAS, effective July 1, 1993, the Cities of Tigard, Durham and King City withdrew the area and water system infrastructure within their boundaries from the Tigard Water District. In lieu of the division of Tigard Water District assets as provided by 222.540, the City of Tigard entered into intergovernmental agreements for the delivery of water service to areas within the then-existing District boundaries including the cities of Durham, King City and the Tigard Water District; and,

WHEREAS, this arrangement was memorialized in three separate agreements (IWB Agreements) between Tigard and the City of Durham, Tigard and the City of King City, and Tigard and the Tigard Water District; and

WHEREAS, the IWB Agreements provided, among other things, for City of Tigard operation and management of the entire water system wherever located and that all users within the Tigard Water Service Area would obtain service at the same rates and on the same terms and conditions; and

WHEREAS, the IWB Agreements also provided for participation by the Parties through an Intergovernmental Water Board to make recommendations on various water-related issues to the Tigard City Council; and

WHEREAS, the City of Tigard has provided all services under the IWB Agreements since their effective date and the existing IWB Agreements expire on December 31, 2018. King City desires to terminate and cancel its existing IWB Agreement with the City of Tigard prior to the current expiration date and to replace it with this Agreement whereby the City of Tigard assumes complete ownership and responsibility of the Water Supply System Assets within King City and agrees to supply water to King City along with the obligations set forth herein; and

WHEREAS, entry into this Agreement by the Parties is consistent with ORS 225.020 and the Parties' respective city charters, municipal codes, comprehensive plans and public facilities Plans; and

DRAFT KC Agreement

September 4, 2013

WHEREAS, pursuant to the Tigard City Charter and ORS 225.020, Tigard has the authority to acquire, own and operate the King City water system located outside the incorporated boundaries of Tigard and provide direct service to King City water system users; and

WHEREAS, as set forth below in the terms and conditions of this Agreement, King City desires to transfer ownership and responsibility of the water system to Tigard and Tigard agrees to:

- a) Assume ownership and full responsibility to operate, maintain and repair the King City water system, and
- b) Continue to supply water and to secure future supply as needed, and
- c) Provide all water-related administration; and

WHEREAS, the parties have authority to enter into this Agreement pursuant to ORS 190.003 through 190.030, and being fully advised.

NOW, THEREFORE THE PARTIES AGREE AS FOLLOWS:

I. DEFINITIONS

1.1 “City of King City” shall mean the City of King City, an Oregon municipal corporation (King City).

1.2 “City of Tigard” shall mean the City of Tigard, an Oregon municipal corporation (Tigard).

1.3 “Distribution System,” or “Distribution System Assets” shall mean the potable water distribution systems of each Party providing direct service to that Party’s system users through pipelines twelve (12) inches or less in diameter.

1.4 “Intergovernmental Water Board Agreements,” shall mean those three (3) separate agreements that took effect on January 1, 1994, between Tigard and the City of Durham, Tigard and the City of King City, and Tigard and the Tigard Water District (IWB Agreements).

1.5 “Oregon Health Authority” shall, mean the State of Oregon Health Authority (OHA).

1.6 “Party” or “Parties” shall mean any signatory entity to this Agreement or any other local government or domestic water supply district that may join this Agreement.

1.7 “Safe Drinking Water Act,” shall mean the Federal Safe Drinking Water Act of 1974 as amended (SDWA).

1.8 “Tigard Water Services Area,” shall mean the area of the Tigard Water District, as it existed on July 1, 1993, the effective date of the IWB Agreements and as set forth on Exhibit 1,

DRAFT KC Agreement

September 4, 2013

attached and incorporated by reference and all additions to the TWSA by annexation to either Party, amendments to the Urban Growth Boundary or designation as Urban Reserve.

1.9 “Water Supply System” or “Water Supply System Assets” shall mean all water sources and facilities, appurtenances, real property and personal property used in treatment, pumping, storage and transmission of potable water within the TWSA to provide water to distribution system.

II. EFFECTIVE DATE

2.1 The effective date of this Agreement is _____ and shall continue in perpetuity unless terminated as provided in Article VIII.

III. OWNERSHIP

3.1 Water Supply System Assets. In consideration of the assumption of obligations and responsibilities by Tigard in Article IV below, King City grants, conveys, transfers and assigns all ownership right, title and interest in any and all Water Supply System Assets that King City owns or has any rights of whatsoever kind and wherever situated in the TWSA to Tigard and Tigard accepts ownership AS-IS. The Water Supply System Assets are identified on Exhibit 2, attached hereto and incorporated by reference. King City agrees to execute all documents to effectuate such conveyances as requested by Tigard. Upon conveyance, Tigard will own 100% of King City’s interest in the Water Supply System Assets wherever situated and King City shall have no shared ownership or tenancy in common in any Water Supply System Assets or the Distribution System located within King City’s boundaries.

3.2 Distribution System Asset. In consideration of the assumption of obligations and responsibilities by Tigard in Article IV below, King City grants, conveys, transfers and assigns all ownership right, title and interest in any and all King City Distribution System Assets of whatsoever kind and wherever situated within the incorporated area of King City to Tigard and Tigard accepts ownership AS-IS. The Distribution System Assets are identified on Exhibit 3, attached hereto and incorporated by reference. King City agrees to execute all documents to effectuate such conveyances as requested by Tigard. Upon conveyance, Tigard will own 100% of the Distribution System Assets located within King City’s boundaries and King City shall have no shared ownership or tenancy in common in any Distribution System Assets.

IV. TIGARD COVENANTS AND OBLIGATIONS

In consideration of King City’s release, transfer and conveyance of assets in Article III above, Tigard agrees to:

4.1 Water Supply. Secure and supply all water to King City at the same quality and on the same terms, conditions and price for the same customer types and classes as exist in Tigard.

DRAFT KC Agreement

September 4, 2013

Tigard has obtained water supply sources and will continue to develop water supply sources to achieve reliable and redundant supplies for the future demands of King City including present boundaries, areas within the Urban Growth Boundary that may be annexed and urban reserves. Tigard agrees to provide water to King City so long as King City is a Party to this Agreement.

4.2 System Management. Tigard will plan, design, build, finance, operate, maintain, repair and replace those components of the Water Supply System and the Distribution System located within King City's boundaries as necessary for source, treatment, transmission, pumping and storage to deliver water as necessary to King City water system users with recovery of costs through rates so that users in King City pay their share under Section 4.9 below.

4.3 Curtailment. Tigard maintains a curtailment plan to meet shortages in water supply. Curtailment shall be consistent and equal throughout Tigard and King City so that all users are treated equally.

4.4 Demand Forecasting. Tigard will be responsible for demand forecasting and planning based on population or other information provided by King City. King City will provide information as reasonably requested by Tigard to enable Tigard to complete this task.

4.5 Regulatory Matters. Tigard will be responsible for compliance with all federal and state statutes, rules and administrative processes related to water source and water supply and the Distribution Systems within King City. Tigard will provide or will contract for all water quality sampling, testing, monitoring and reporting for SDWA and OHA compliance, as well as any other required reporting for regulatory compliance. Tigard will provide all interfaces with the Oregon Water Resources Department and other related regulatory agencies regarding provision of drinking water.

4.6 Cross Connection Control. Tigard maintains a cross connection and backflow prevention program that meets current state rules and regulations.

4.7 Mapping. King City will provide all available maps, drawings, as-builts, AUTOCADS, or other information to enable Tigard to develop a mapping system compatible with Tigard's information system

4.8 Budget. Tigard's requested budget will be provided to King City by February 28 of each year for review. King City may provide comments or questions to Tigard by April 15 of each year. The Tigard City Council is the sole and final decision maker on budget and rate matters.

4.9 Rate Methodology. Tigard will be responsible for calculation of rates and charges, including system development charges, as related to the Water Supply System. Tigard will adopt

DRAFT KC Agreement

September 4, 2013

rates in accordance with the current edition of the American Water Works Association *Principles of Water Rates, Fees, and Charges* (known as M1 standards), including any system-related debt coverage requirements. Tigard will include in the rates such amounts it deems necessary for the operation, maintenance, repair and replacement of the Distribution System located within King City's boundaries. Tigard and King City users shall obtain service at the same rates and on the same terms and conditions.

4.10 Billing. Tigard will assume all billing and collection functions, including management of any existing agreements King City may have for meter reading and other billing and collection services. King City may include a newsletter to citizens to be included in customer bills so long as Tigard does not incur additional costs beyond a typical bill. If inclusion of a newsletter or other publication increases mail processing costs, (printing, folding, stuffing, etc.), or postage costs, King City must pay the additional costs.

4.11 Public Relations. Tigard will be responsible for communications and public messaging regarding water-related issues involving King City.

4.12 Council/City Staff Meetings. Tigard representatives familiar with the Distribution System located within King City's boundaries or familiar with current issues of interest to King City will attend King City City Council meetings and will meet with the King City city manager as requested.

4.13 Emergency Service. Tigard will respond to water emergencies 24-hours-a-day, including weekends and holidays. Tigard will retain records of emergency calls in accordance with Oregon public records law. King City will forward all water emergency calls to Tigard.

4.14 Water Management and Conservation. Tigard will be responsible for all water management and conservation planning as required by the Oregon Water Resources Department. Tigard will also be responsible for the water master planning as required by the Oregon Health Authority. In the course of water management and conservation planning, Tigard may perform water audits and leak detection services in the Distribution System located within King City's boundaries.

4.15 System Operation and Maintenance. Tigard will operate and maintain the Distribution System located within King City's boundaries Tigard will install services and meters as needed in accordance with Tigard's standards. Additions, replacements or repairs to the Distribution System will be according to Tigard's standards for construction. Tigard will develop maintenance schedules consistent with prudent water utility practices. Tigard will be responsible for service requests and account inquiries.

DRAFT KC Agreement

September 4, 2013

4.16 Capital Improvement. Tigard will be responsible to budget and appropriate money for capital improvements. Capital improvements shall be made according to Tigard's Capital Improvement Plan and timing of projects reasonably designated by Tigard. Tigard will manage the Capital Improvement Program. All capital improvements shall be constructed according to Tigard construction standards.

4.17 Telemetry. Tigard will manage, maintain, and upgrade or replace, as necessary, the telemetry system. King City will cooperate when radio frequency license renewal is required, if necessary.

4.18 Activities in King City's Right of Way. King City will not charge Tigard any right of way permit fees for water-related projects. Tigard will seek the appropriate permits prior to working in King City's right of way. Tigard will make reasonable efforts to notify King City of projects affecting King City's right of way so that King City may coordinate traffic and other construction-related impacts.

4.19 Pay Stations. King City will designate publicly accessible location(s) for pay stations where users can submit Tigard utility payments.

4.20 Consumer Confidence Reports. Tigard will provide consumer confidence reports to King City users, commencing with the report due June 30, 2014.

4.21 New Development. King City shall refer all applicants who require water service to Tigard. Tigard will review and provide comments to King City on development applications. These comments will be provided within the timelines set in current land use statutes. Tigard will provide the review, approval of engineering plans, inspections and final acceptance of additions or modifications to the water Distribution System. The Tigard City Engineer has the authority regarding public improvement design standards, including any variances within those standards.

4.22 Other Matters. Tigard will perform such other functions as the Parties hereto mutually agree in writing.

V. RIGHT OF WAY

5.1 Use and Occupancy. Tigard shall have the right to use and occupy the streets and roads of King City where Water Supply System Assets or the Distribution System now exist or are installed in the future.

5.2 Fee for Use of Right of Way. Tigard will pay King City a mutually-agreed fee for use of King City rights of way for Water Supply System Assets and the Distribution System. The

DRAFT KC Agreement

September 4, 2013

Parties agree that such payment is mutually-agreed and voluntary and that such payment cannot be imposed on Tigard under existing law. The amount shall be set by a formula set forth on Exhibit 5 attached hereto and incorporated by reference. Exhibit 5 may be periodically revised by mutual agreement every five (5) years but will not at any time exceed _____% of revenues collected by Tigard from King City users.

VI. ANNEXATION

6.1 Service to Annexed Areas. Tigard has planned for and will provide water service according to anticipated densities under the applicable comprehensive plan and zoning codes of Tigard and King City. Tigard will also serve areas annexed to King City, areas added to the Urban Growth Boundary and any designated Urban Reserves where King City will ultimately be required to provide water service. Service will only be provided on annexation to King City or Tigard, unless the health hazard annexation statutory process compels Tigard to provide water service to the subject property(ies).

VIII. WITHDRAWAL AND TERMINATION

7.1 Voluntary Withdrawal. If King City elects, King City may voluntarily withdraw from this Agreement upon at least one (1) year prior written notice. Withdrawal will occur on the next July 1st being at least 12 months from the date of notice. Tigard will transfer back to King City the Distribution System Assets. Master meters will be installed at all connection points to the Distribution System located within King City's boundaries. Master meters will be owned by Tigard but installed at King City expense. If bonds or indebtedness have been incurred against the Water Supply System Assets or Distribution System Assets, withdrawal cannot occur until the debts have been paid or satisfactory arrangements to Tigard have been made for payment of the proportionate share of debt through a wholesale contract with Tigard where the calculated rate contains a debt service component. The most current edition of the American Water Works Association *Principles of Water Rates, Fees, and Charges* (known as M1 standards) will be used to determine wholesale rates.

7.2 Material Breach. In consideration of the conveyance of all right, title and interest to the Water Supply System Assets to Tigard in Exhibit 2, Tigard agrees to provide water service to King City. King City may withdraw for material breach of this Agreement and upon one year written notice. Termination and withdrawal shall be effective on the date specified in notice, unless the Parties agree otherwise in writing.

7.3 Notice and Opportunity to Cure. Subject to Article VIII, if Tigard materially breaches the Agreement and fails to reasonably commence cure of the default, following a 60day notice by King City, King City may give notice of termination and withdrawal. King City may elect to

DRAFT KC Agreement

September 4, 2013

re-acquire only those Distribution System Assets located within King City's boundaries. If bonds or indebtedness have been incurred against the Water Supply System Assets or Distribution System Assets, withdrawal cannot occur until the debts have been paid or satisfactory arrangements to Tigard have been made for payment of the proportionate share of debt through a wholesale contract with Tigard where the calculated rate contains a debt service component.

7.4 Water Supply System Assets. Recognizing the conveyance to Tigard under Section 3.1, King City shall have no right to obtain or re-acquire ownership in any Water Supply System Asset wherever located. King City shall not re-acquire any Distribution System Assets owned by Tigard that serve Tigard users within or outside King City's boundaries.

7.5 Source. If King City terminates the Agreement and re-acquires the Distribution System, King City must negotiate a wholesale water purchase contract with Tigard or obtain its own source. If King City negotiates wholesale purchase contract with Tigard, then billings will be based on water through master meters according to the terms of the contract. The cost of the master meter, installation thereof, and master meter operations, maintenance repair and replacement will be included in the rate. The proportionate cost of debts under Sections 7.1 or 7.3 will also be included in the rate.

7.6 Cross Connections. If King City obtains water from another source, then in addition to the master meters at connection points, Tigard approved backflow prevention devices must be installed at the expense of King City, unless, in Tigard's sole discretion, it waives this requirement.

7.7 No Further Obligations. Following withdrawal and/or termination, King City shall be solely responsible for all aspects of the Distribution System located within King City's boundaries. Tigard shall have no further responsibility for supply and shall be completely released from further obligations under this Agreement, known or unknown.

VIII. DISPUTE RESOLUTION

1.1 The Parties hereby agree that resolution of any and all disputes arising out of the terms of this Agreement or interpretation thereof shall follow the steps as set forth hereunder. Nothing shall prevent the disputing Parties from waiving any of the steps by mutual consent.

1.2 Dispute Resolution Steps.

Step One (Negotiation):

DRAFT KC Agreement

September 4, 2013

A Party who has a dispute will give written notice (Dispute Notice) to the other Party setting forth the reasons for such dispute. Within ten (10) calendar days following the Dispute Notice, each Party will designate an authorized representative to negotiate on behalf of the Party he/she represents and attempt to negotiate a proposed resolution. If the representatives negotiate a proposed resolution within ninety (90) days of the Dispute Notice, the representatives shall reduce the resolution to writing and submit the same for approval by the King City and Tigard city managers, subject to approval by the governing bodies if necessary. A resolution so approved shall be binding. If the proposed resolution is not approved within sixty (60) days, the Parties shall proceed to Step Two.

Step Two (Mediation):

If the dispute cannot be resolved within the timeframe outlined in 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, within thirty (30) days (or one hundred and ninety days 190 days of the Dispute Notice), the Parties will select a mediator through the Rules of the American Arbitration Association's Mediation Service or such other neutral service as the Parties may agree upon.

Step Three (Legal Action):

If the parties cannot agree on a mediator or if mediation is unsuccessful after two hundred and fifty (250) days from the date of Dispute Notice, a Party may initiate litigation in the Circuit Court of the State of Oregon for Washington County and may seek all available remedies. Each Party shall bear its own legal and expert witness fees at all stages of the dispute resolution process, including at trial or on any appeals.

IX. INDEMNITY AND INSURANCE

9.1 Mutual Indemnity. Subject to the Constitution and laws of the State of Oregon and the damage limitations of ORS 30.260 to 30.300, each Party shall defend, indemnify, and hold each other harmless from and against any and all claims, demands, suits, actions, judgments, recoveries, liabilities, damages, penalties, costs and expenses, including but not limited to reasonable attorneys' fees resulting from damage to property or bodily injury, including death, to the extent caused by a Party's breach of this Agreement or the negligent actions or omissions of that Party, or its employees, servants, agents, or officers elected or appointed. The indemnification obligation provided in this section shall survive any withdrawal from, or any expiration or termination of this Agreement for the duration of any applicable statute of limitations.

9.2 Tigard Indemnity. Tigard agrees to hold harmless and save King City from any and all obligations and claims arising out of the IWB Agreement between Tigard and King City and

DRAFT KC Agreement

September 4, 2013

those similar agreements between Tigard and the City of Durham and Tigard and the Tigard Water District.

9.3 Insurance. If Tigard hires a consultant or contractor to work on any portion of the Water Supply System located within King City's boundaries, the contract documents shall require that consultant/contractor obtain, prior to beginning any work, and maintain in full force and effect for the term of the contract, at consultant's/contractor's expense, comprehensive general liability, to include bodily injury and property damage on a combined single limit per occurrence and 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 Tigard would typically require for similar work. The named insureds on any policies shall be the consultant/contractor, Tigard and King City. Consultant/contractor shall name Tigard and King City, their elected and appointed officials, officers, agents, employees and volunteers as additional insureds. The policies shall be primary to and non-contributory with any insurance or self-insurance carried by Tigard or King City, and shall be issued by a company authorized to do business in the State of Oregon. The consultant/contractor shall provide Tigard written notice within thirty (30) days of cancellation or material modification of the insurance contract at the addresses listed below. Consultant/contractor shall provide certificates of insurance and additional insured policy endorsement to Tigard prior to commencement of any work. If requested, complete copies of insurance policies shall be provided to Tigard and King City. Consultant/contractor shall be financially responsible for all pertinent deductibles, self-insured retention and/or self-insurance used to satisfy these requirements.

X. GENERAL PROVISIONS

10.1 Amendments. Any Party may request changes to this Agreement. Amendments to this Agreement must be proposed in writing and approved by a vote of the governing body of each Party.

10.2 Access to Records. To the extent permitted by law, all records, accounts and documents relating to matters covered by this Agreement shall be subject to inspection, copying, review or audit by any requesting Party. Upon reasonable notice, during normal working hours, each Party shall provide the other Party with access to its facilities for copying said records at the requesting Party's expense.

10.3 Public Records.

- a) Tigard and King City will comply all public records laws. A public records request will be reviewed to identify possible disclosure exemptions prior to

DRAFT KC Agreement

September 4, 2013

disclosure of the record.

10.4 Confidential Information. If a Party considers any portion of a record it provides under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Party shall clearly identify any specific information that it claims to be “Confidential.” A Party receiving a request for a record marked as Confidential shall notify the other Party of the request and the date that such record will be released to the requestor unless another Party obtains a court order to enjoin that disclosure. If another Party fails to timely obtain a court order enjoining disclosure, the receiving Party will release the requested information on the date specified. No Party shall be liable for any records that the Party releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

10.5 Agreement Complete. This Agreement is a complete expression of the terms herein and any oral or written representations or understandings not incorporated herein are excluded.

10.6 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement.

10.7 Waiver. No term or provision of this Agreement shall be deemed waived and no breach excluded unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented.

10.8 Subsequent Breach. Waiver of any default shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval of all Parties.

10.9 Rights Reserved. Except as specifically provided herein, each Party retains all rights and claims that may exist now or in the future against another Party.

10.10 Notice. Any notice shall be in writing and shall be addressed to the person designated below. Any notice may be given by certified mail, overnight delivery, facsimile, or personal delivery. Notice is deemed given when delivered. Email may be used for notice that does not allege a breach or dispute under this Agreement. The following contact information shall apply until amended in writing by a Party providing new contact information to each other Party.

King City

Name: City Manager

DRAFT KC Agreement

September 4, 2013

Address: 16580 SW 85th Avenue, Tigard, Oregon 97224
Email:
Telephone: 503-547-8150
Fax:

Tigard

Name: City Manager
Address: 13125 SW Hall Boulevard, Tigard, Oregon 97223
Email:
Telephone: 503-639-4171
Fax:

10.11 Partial Invalidity. If any of the provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall remain in full force and effect. If the invalidated section is essential to the benefit of the bargain, the Parties will in good faith negotiate a replacement provision to make the Parties whole to the greatest extent possible.

10.12 Assignment. No Party may sell or assign any of its rights or benefits under this Agreement without approval of the governing bodies of each Party.

CITY OF KING CITY

CITY OF TIGARD

By: _____

By: _____

ATTEST: _____
City Recorder

ATTEST: _____
City Recorder