

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

THIS FIFTH AMENDMENT to Intergovernmental Agreement Regarding Water Supply Facilities, Design, Construction and Operation (Fifth Amendment) is effective this 26th day of June 2018, 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, and which was subsequently amended by the First Amendment, Second Amendment, Third Amendment and Fourth Amendment, (the agreement with all amendments is referred to herein as the "Agreement."); and

WHEREAS, the Agreement requires that within a time certain after the Initial Expansion is constructed, property interests held in the name of Lake Oswego are to be conveyed to Tigard in proportion to its allocation of water supply capacity; and

WHEREAS, the Agreement provides that from time to time exhibits may be revised or new exhibits added based upon further evaluation and studies; and

WHEREAS, further evaluation and studies have occurred and the Parties agree that certain text amendments and a new Exhibit 8 should be added to clarify proportionate ownership and to reflect the final reconciliation of costs owed by Tigard to acquire its proportionate interest in real property held in the name of Lake Oswego; and

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

Section 1. Addition of Exhibit. Exhibit 8 (Tigard Buy-In Final Reconciliation) is added to the Agreement in the form attached to this Fifth Amendment as Attachment 1.

Section 2. Payment of Costs Due. Within thirty days after the effective date of this Fifth Amendment, Tigard will pay the City of Lake Oswego \$311,312 representing full and final reimbursement of costs for real property interests acquired by Tigard.

Section 3. Section 4.2 of the Agreement is amended as follows (deleted text ~~stricken~~, new text **bolded and double-underlined**):

4.2 Anticipated Ownership

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At the completion of the Initial Expansion, the Parties' percentage ownership shall be allocated as set forth in ~~Exhibit 7~~ **Exhibits 6 and 8** attached hereto and incorporated by reference. **Where assets are listed on both Exhibits 6 and 8, the allocations in Exhibit 8 shall control.**

Section 4. Section 5.1 of the Agreement is amended as follows (deleted text ~~stricken~~, new text **bolded and double-underlined**):

5.1 Creation of Common Ownership

Title to or easements rights to all properties over, under or upon which Supply Facilities are or shall be located (Property) shall remain in the name of Lake Oswego until the conclusion of the Initial Expansion. Tigard shall have an equitable interest as if it were a vendee under a land sale contract. Within ~~90~~ **30** days following ~~substantial completion of the Initial Expansion~~ **the effective date of the fifth amendment to this Agreement**, Lake Oswego will, by Warranty Deed **(for fee interests) and assignment (for easement rights)**, convey to Tigard an undivided proportionate interest as tenant in common in the Property as set forth on ~~Exhibit~~ **Exhibits 6 and 8**, attached hereto and incorporated by reference. **Where assets are listed on both Exhibits 6 and 8, the allocations in Exhibit 8 shall control.** The Parties agree the Property owned by Lake Oswego as of the date of this Agreement shall be valued in 2008 dollars. Property acquired after the date of this Agreement shall be acquired proportional to ownership according to the purchase price paid. Closing costs for the Lake Oswego transfer to Tigard shall be shared equally.

Section 5. Section 5.2.2.2 of the Agreement is amended as follows (deleted text ~~stricken~~, new text **bolded and double-underlined**):

Following transfer, Lake Oswego and Tigard shall be responsible for all costs related to the Property in proportion to their respective interests as set forth on ~~Exhibit 7~~ **Exhibits 6 and 8. Where assets are listed on both Exhibits 6 and 8, the allocations in Exhibit 8 shall control.** Such costs shall be included in the monthly invoices under Section 7.1.4.

Section 6. Entire Agreement. Except a specifically amended by this Fifth Amendment, the Agreement remains in full force and effect.

SIGNATURE LINES TO FOLLOW

IN WITNESS WHEREOF the Parties have dated and signed this Agreement

City of Lake Oswego

City of Tigard

Kent Stuckvalm 6-21-18
Mayor Dated

[Signature] 6/26/18
Mayor Dated

ATTEST:

ATTEST:

Anne-Marie Simpson 6-21-18
City Recorder Dated

Carol A. Gager 6/26/18
City Recorder Dated

APPROVED AS TO FORM:

APPROVED AS TO FORM:

[Signature] 6-21-18
City Attorney Dated

[Signature] 6/26/18
City Attorney Dated

**EXHIBIT _8_
TIGARD BUY- IN FINAL RECONCILIATION
Amendment No. 5 - Attachment 1**

Asset	Tax Map	Tax Lot	Clackamas Co. Deed	Original Cost	Net Reproduction Cost ¹	Tigard Allocation % ²	Tigard buy-in at 18/38	Additional Tigard buy-in at 18/38 less previous payments
Clackamas River Intake Land*	2 2E 20CA	15001	Bk 173, Pg 900-902	\$ 10,450	\$ 260,000	18/38	\$ 123,157.89	\$27,369
						Subtotal	\$ 123,158	
Waluga Reservoir: Land								
Reservoir Property	2 1E 07 AD	03100	Doc 72-06414	n/a	\$354,508	18/38	\$ 167,925	\$0 ²
Waluga Res #1 *	2 1E 07AD	00700	Doc 76-36977	n/a	\$1,407,287	18/38	\$ 666,610	\$0 ²
4800 Carmen Dr*	2 1E 07AD	00900	Doc 92-063461	\$ 323,300	\$945,353	18/38	\$ 447,799	\$0 ²
Vacant Parcel*	2 1E 07AD	01000	Doc 92-063461	\$ 323,300	\$945,353	18/38	\$ 447,799	\$0 ²
						Subtotal	\$ 1,148,911	\$255,314
Water Treatment Plant Land								
4260 Kenthorpe Way - parcel 1*	2 1E 24BD	00300	Bk 688, Pg 581	n/a	\$2,425,478	18/38	\$ 1,148,911	\$255,314
4260 Kenthorpe Way - parcel 2*	2 1E 24BD	00401	Doc 79-35248	n/a	\$271,975	18/38	\$ 128,830	\$28,629
						Subtotal	\$3,007,872	
Totals				\$ 657,050	\$ 6,609,953		\$ 3,131,030	\$311,312

¹Net reproduction cost for these properties are based on an appraisal conducted by Integra Realty Resources (July 2008).

²Additional buy-in amounts zeroed out reflecting Tigard contribution to Waluga #1 roof replacement.

³Allocations not revised per this Exhibit 8 to Amendment 5, remain as shown in Exhibit 6 to Amendment 3.