

**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 19<sup>th</sup> day of December 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);



**EXHIBIT \_6\_**  
**AMENDED AND CORRECTED TIGARD BUY-IN**

Asset	Tax Map	Tax Lot	Clackamas Co. Deed	Original Cost	Net Reproduction Cost	Tigard Allocation %	Tigard Share
Clackamas River Intake & Pump Station	2 2E 20CA	15001	Bk 173, Pg 900-902	\$ 1,911,733	\$ 1,832,454	0.00%	\$ -
Clackamas River Intake Land*				\$ 10,450	\$ 260,000	14/38	\$ 95,789
Computer System/Software				\$ 214,222	\$ 72,311	14/38	\$ 26,641
Finished Water Transmission				\$ 2,111,711	\$ 5,440,227	0.00%	\$ -
General Plant				\$ 61,500	\$ 15,561	14/38	\$ 5,733
Raw Water Transmission				\$ 612,137	\$ 2,460,521	14/38	\$ 906,508
Waluga Reservoir				\$ 1,281,427	\$ 1,960,196	0.00%	\$ -
						Subtotal	\$ 1,034,671
<b>Waluga Reservoir: Land</b>							
Reservoir Property	2 1E 07 AD	03100	Doc 72-06414	n/a	\$354,508	14/38	\$ 130,608
Waluga Res #1*	2 1E 07AD	00700	Doc 76-36977	n/a	\$1,407,287	14/38	\$ 518,474
4800 Carmen Dr*	2 1E 07AD	00900	Doc 92-063461	\$ 323,300	\$945,353	14/38	\$ 348,288
Vacant Parcel*	2 1E 07AD	01000	Doc 92-063461	\$ 323,300	\$945,353	14/38	\$ 348,288
<b>Water Treatment Plant</b>							
Water Treatment Plant Land				\$ 9,731,005	\$ 11,704,894	0.00%	\$ -
4260 Kenthorpe Way - parcel 1*	2 1E 24BD	00300	Bk 688, Pg 581	n/a	\$2,425,478	14/38	\$ 893,597
4260 Kenthorpe Way - parcel 2*	2 1E 24BD	00401	Doc 79-35248	n/a	\$271,975	14/38	\$ 100,201
						Subtotal	\$2,339,456
4245 Mapleton Dr.* (RMV)	2 1E 24BD	01200	Doc 89-10200	\$ 85,000	\$ 509,554	18/38	\$241,368
4305 Mapleton Dr.* (RMV)	2 1E 24BD	01300	Doc 95-33429	\$ 190,000	\$ 504,459	18/38	\$238,954
4315 Mapleton Dr.* (RMV)	2 1E 24BD	01400	Doc 89-13210	\$ 116,000	\$ 504,459	18/38	\$238,954
xxxx Mapleton Dr.* (RMV)	2 1E 24BD	01500	Doc 89-13210	\$ -	\$ -		\$ -
<b>Totals</b>				\$ 16,971,785	\$ 31,614,589	Subtotal	\$719,276
						<b>Total</b>	\$ 4,093,404

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

Corrected Tigard Buy-in	
Mapleton Property Total =	\$719,276
Other WTP property total =	\$2,339,456
All non-property totals =	\$1,034,671
Total Tigard Allocation =	\$4,093,404
Prior Paid by Tigard =	(\$2,820,558)
<b>Balance Due =</b>	<b>\$1,272,846</b>

**EXHIBIT 7**  
**ALLOCATION OF SYSTEM IMPROVEMENT COSTS TO THE PARTIES**

Project Costs*	Cost of Improvements	Lake Oswego		Tigard	
		Allocation (%)	Share (\$)	Allocation (%)	Share (\$)
<b>Water Treatment Plant</b>					
- 38 mgd Expansion	\$ 74,966,399	37.16%	\$ 27,857,514	62.84%	\$ 47,108,885
<b>River Intake Pumping Station</b>	\$ 12,932,668	20/38	\$ 6,806,667	18/38	\$ 6,126,001
<b>Raw Water Pipeline</b>	\$ 24,540,330	20/38	\$ 12,915,963	18/38	\$ 11,624,367
<b>Finished Water Pipeline</b>	\$ 52,856,778				
- WTP to South Side of Oswego Lake	\$ 25,583,609	20/38	\$ 13,465,057	18/38	\$ 12,118,552
- South Side of Oswego Lake to North Side of Oswego Lake	\$ 9,732,139	12/30	\$ 3,892,856	18/30	\$ 5,839,283
- North Side of Oswego Lake to Waluga Reservoir	\$ 13,466,442	0%	\$ 500,000**	100%	\$ 12,966,442
- Waluga Reservoir to Bonita Pumping Station	\$ 4,074,588	0%	\$ -	100%	\$ 4,074,588
<b>Waluga Reservoir</b>	\$ 8,329,497	1.7/3.5	\$ 4,045,756	1.8/3.5	\$ 4,283,741
<b>Bonita Pumping Station</b>	\$ 8,273,901	0%	\$ -	100%	\$ 8,273,901
<b>Sub-Totals</b>	\$ 181,900,000	38.20%	\$ 69,483,813	61.80%	\$ 112,415,760
<b>Program Costs</b>					
<b>Program Management, Permitting, Construction Management</b>	\$ 34,696,785	38.20%	\$ 13,254,172	61.80%	\$ 21,442,613
<b>Sponsor/Staff Cost (wages, transfers, materials &amp; services, testing)</b>	\$ 13,257,000	38.20%	\$ 5,064,174	61.80%	\$ 8,192,826
<b>SCADA System Services</b>	\$ 1,861,684	38.20%	\$ 711,163	61.80%	\$ 1,150,521
<b>Legal, Land Use/ROW and Other Professional Services</b>	\$ 9,644,000	38.20%	\$ 3,684,008	61.80%	\$ 5,959,992
<b>Construction Contingency</b>	\$ 8,437,000	38.20%	\$ 3,222,934	61.80%	\$ 5,214,066
<b>Sub-Totals</b>	\$ 67,896,000	38.20%	\$ 25,936,000	61.80%	\$ 41,960,000
<b>Total Costs</b>	\$ 249,796,000	38.20%	\$ 95,419,800	61.80%	\$ 154,375,800

\* - Project costs include design, construction, and mitigation contingency and are presented in 2014 dollars (assumed mid-point of construction).

\*\* - Lake Oswego's half of cost to upsize this reach of FWP to 36-inch so that existing 18-inch can be retired; otherwise, LO pays 0% of new pipe in this reach.