

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

**DATED \_\_\_\_\_, 2008**

**BETWEEN**

**THE CITY OF LAKE OSWEGO**

**AND**

**THE CITY OF TIGARD**

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## **LIST OF EXHIBITS**

- Exhibit 1 Existing Real Property, Supply Facility Components and Valuation
- Exhibit 2 Service Areas
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- Exhibit 5 Supply Facilities Capital Improvement Program (to be adapted by Councils)
- Exhibit 6 Determination of Tigard Buy-In
- Exhibit 7 Allocation of System Improvement Costs to the Parties

This Intergovernmental Agreement Regarding Water Supply Facilities, Design, Construction, And Operation is dated \_\_\_\_\_, 2008 (the “Agreement”), 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 the “Parties.”

### **RECITALS**

WHEREAS, the City of Tigard operates a municipal water supply utility under ORS 225, with transmission, storage and distribution facilities to deliver potable water to Customers within the area of the Cities of Tigard, King City, Durham, and the remainder of the Tigard Water District;

WHEREAS, the City of Lake Oswego operates a municipal water supply utility under ORS 225, which treats and distributes potable water to Retail Customers and sells water at wholesale to the Lake Grove Water District, the River Grove Water District, Skylands Water Company, Glenmorrie Cooperative Association and Alto Park Water District (the “Existing Wholesale Customers”);

WHEREAS, Lake Oswego has existing water intake and water treatment facilities, transmission, storage facilities (hereinafter “Supply Facilities”) together with distribution facilities and water rights;

WHEREAS, the Supply Facilities require capital improvements to repair and replace existing assets and to construct new improvements, all at a significant cost;

WHEREAS, Tigard desires to acquire an ownership interest in the Supply Facilities to obtain a permanent source of raw water and treatment facilities for potable

water and also needs to make capital improvements for storage and transmission facilities; and

WHEREAS, the Parties jointly funded a study by Carollo Engineers known as the Lake Oswego and Tigard Joint Water Supply System Analysis dated July, 2007 (“Carollo Report”); and

WHEREAS, the Parties agree that, based upon the Carollo Report, there are significant benefits by jointly taking action to perfect existing water rights, construct, repair, replace, expand and otherwise improve the Supply Facilities infrastructure necessary to supply that water to the Parties and to realize or mitigate potential environmental impacts and benefits; and

WHEREAS, prior to the execution of this Agreement, the Parties worked in a collaborative, open, and participative manner to select an operating framework that best serves the needs of the Parties, and this Agreement incorporates those precepts;

WHEREAS, the Parties agree that creation of this Intergovernmental Agreement and investment by the Parties shall provide the Parties with stability and local control over the source of supply, build ownership equity in the Clackamas River System, provide for flexibility in the use and allocation of water, provide for flexibility for management of water resources for enhanced costs and operation efficiency, create opportunities to share and trade staff resources, expertise and technological capabilities, and being fully advised,

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

## ARTICLE I DEFINITIONS

### 1.1 Definitions

As used in this Agreement, the following terms when capitalized shall have the following meanings:

- 1.1.1 *Agreement* – this Agreement
- 1.1.2 *Book Depreciation Life* – the years used to depreciate an asset in accordance with Generally Accepted Accounting Principles.
- 1.1.3 *Capacity* – capability from the various components of the Supply Facilities to produce or deliver water; measured in cubic feet per second (cfs), gallons, gallons per day (gpd), gallons per minute (gpm), million gallons per day (mgd), or other comparable measurement and available based on current operating conditions consistent with generally accepted engineering and operating practices.
- 1.1.4 *City of Lake Oswego* – an Oregon Municipal Corporation in Clackamas, Multnomah, and Washington Counties, Oregon.
- 1.1.5 *City of Tigard* – an Oregon municipal corporation in Washington County, Oregon.
- 1.1.6 *Clackamas River Intake Pump Station* – an existing structure comprised of a reinforced concrete building and all equipment and materials contained therein or any future expansion, modification or replacement thereof that allows water to be withdrawn from the Clackamas River and pumped through the raw water transmission line to the Water Treatment Plant Facilities. The Clackamas River Intake Pump Station ownership and its

agreed value are more fully described in Exhibit 1 which, exhibit may be updated and revised by resolution of the Parties.

1.1.7 *Curtailment Plan* – A written plan developed for curtailment of water service in accordance with OAR Chapter 690 Division 86 rules.

1.1.8 *Demand* – the amount of water used or projected to be used by a Party and imposed on the Supply Facilities to serve a Party’s Retail Customers its Existing Wholesale Customers and ultimate service area measured in cfs, gallons, gpd, gpm, mgd, or other appropriate measurement. The basis for determining Demand may be waived or modified by the Parties due to unusual circumstances such as a fire, emergency, etc.

1.1.9 *Depreciated Replacement Cost Value* – the value calculated in the current year by multiplying the original cost of the asset times the index in the Engineering News Record Construction Cost Index 20-City Average, 1913=100 as published in the Engineering News Record for the year of evaluation. The products shall be divided by Engineering News Record Construction Cost Index 20-City Average, 1913=100 as published in the Engineering News Record for the year placed in service. The result shall then be depreciated from the year placed in service to the year of evaluation using the Book Depreciation Life. The formula\* is expressed as follows:

$$DRC = (CC * ENR^e / ENR^o) * (1 - (Y^e - Y^o) / BDL)$$

Where:

DRC = Depreciated Replacement Cost Value.

CC = Construction cost.

ENR<sup>e</sup> = Engineering News Record Construction Cost Index for the year of evaluation.

ENR<sup>o</sup> = Engineering News Record Construction Cost Index for the year placed in service.

Y<sup>e</sup> = Year of evaluation.

Y<sup>o</sup> = Year placed in service.

BDL = Book Depreciation Life.

1.1.10 *Existing Wholesale Customers* – the Lake Grove Water District, River Grove Water District, Skylands Water Company, Glenmorrie Cooperative Association, and Alto Park Water District who are served at wholesale by Lake Oswego as if they were a Retail Customer of LO under the terms and conditions of this Agreement. The Cities of King City and Durham and the Tigard Water District are contractually served by Tigard and for purposes of this Agreement shall be defined as existing wholesale customers. The parties recognize that the status of these entities are contractual and may change over time as determined by the affected Party to this agreement and the existing wholesale customer.

1.1.11 *Fiscal Year* – the time period as defined under ORS 294.311(17).

1.1.12 *Local Government Investment Pool (LGIP)* – The Oregon State Treasurer’s Local Government Investment Pool, subject to regulatory oversight by the Oregon Secretary of State and administered by the Oregon State Treasury.

- 1.1.13 *Municipal Bond Index* – The rate as published by the State of Oregon Treasury Department entitled “Oregon Bond Index – Oregon A Rated 20 Year” for the first date after the beginning of the fiscal year. Should said rate cease to be published, then the Parties shall determine another comparable index. The date used for determination of the rate may be modified by the Parties in the event of unusual market circumstances (such as declaration of war by the United States).
- 1.1.14 *Planning Forecast* – the document submitted by the Parties in accordance with Article 8.2 which shows the Demands of each Party to be imposed on the Supply Facilities and the Capacity owned or leased by each Party in such facilities.
- 1.1.15 *Project* – The design, permitting and construction of new and expanded Supply Facilities, as generally described in the City of Lake Oswego and Tigard Water Service Area Joint Water Supply System Analysis dated July, 2007 by Carollo Engineers (“Carollo Report”) to provide 32 million gallons per day capacity by 2016 (the Initial Expansion) with the capability to further expand up to 38 million gallons (Longterm Expansion) per day when it appears the water demands of the Parties will exceed 32 mgd. At the completion of Initial Expansion, the Lake Oswego allocation shall be 18 million gallons per day and the Tigard allocation shall be 14 million gallons per day.
- 1.1.16 *Property* – Property shall be parcels of real property owned in fee simple, by easement or other interest over, under or upon which the supply

Facilities are or will be located as part of the Initial Expansion or Long Term Expansion. Property currently held by Lake Oswego will remain in the name of Lake Oswego until completion of the Initial Expansion. Until completion of the Initial Expansion, Tigard shall have an equitable interest as if it were a vendee under a land sale contract. Additional properties acquired as part of the Initial Expansion or the Long Term Expansion shall be acquired as tenants in common in proportion to the Parties' allocation of capacity.

1.1.17 *Retail Customers* – A user within the Party's service area boundary to which users may be added from time to time by annexation, extra-territorial extension of service, merger and/or consolidation or by intergovernmental agreement among the Parties pursuant to ORS 190. A municipal corporation or other entity, which purchases water for resale, shall not be considered a Retail Customer.

1.1.18 *Service Area* – The existing and future service area for each Party as identified in the Carollo Report, as set forth on Exhibit 2, and as may be modified by the Parties or pursuant to Section 17.8.3 of this Agreement.

1.1.19 *Summer Period* – June 1 through October 31.

1.1.20 *Supply Facilities* – the facilities utilized by the Parties identified in the Carollo Report consisting of Water Treatment Plant Facilities, Transmission Facilities, Water Storage Facilities, and other facilities necessary for treatment and conveyance of potable water to the Parties. A map of the Supply Facility components is provided in Exhibit 3, which

exhibit may be updated and revised by resolution of the Parties. The map is for illustrative purposes only and shall not be considered a legal description of the Supply Facilities

1.1.21 *Surface Water Rights* – those water rights held by Lake Oswego registered with the State of Oregon Water Resources Department, which allow for diversion of water for use at the Water Treatment Plant Facilities. The Surface Water Rights are more fully described in Exhibit 4, which exhibit may be updated and revised by resolution of the Parties.

1.1.22 *Transmission Facilities* – the raw water transmission line connecting the Clackamas River Intake Pump Station to the Water Treatment Plant Facilities and the finished water transmission line connecting the Water Treatment Plant Facilities to Lake Oswego’s Waluga Reservoir as identified in the Carollo Report. The Transmission Facilities, ownership and their agreed value are more fully described in Exhibit 1 which, exhibit shall be updated and revised by resolution of the Parties.

1.1.23 *Water Treatment Plant Facilities* – the pumping stations and treatment plant, which treat raw water and produce potable water for conveyance by the Transmission Facilities. The Water Treatment Plant Facilities, ownership, and their agreed value are more fully described in Exhibit 1, which exhibit shall be updated and revised by resolution of the Parties within 30 days after the execution of this Agreement, following completion of an updated appraisal.

1.1.24 *Water Storage Facilities* – the existing Waluga Reservoir which receives potable water from the Water Treatment Plant Facilities as conveyed through the Finished Water Transmission Facilities and any future expansion, modification or replacement thereof. The Water Storage Facilities, ownership, and their agreed value are more fully described in Exhibit 1, which exhibit shall be updated and revised by resolution of the Parties.

1.1.25 *Winter Period* – November 1 through May 31.

## 1.2 Interpretation

In this Agreement, unless a clear contrary intention appears: (a) reference to any person includes such person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity; (b) reference to any gender includes each other gender; (c) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (d) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition; (e) "hereunder," "hereof," "hereto," "herein," and words of similar import are references to this Agreement as a whole and not to any particular Section or other provision hereof;

(f) relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including”; (g) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term; (h) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated hereunder; and (i) “will” and “shall” are mandatory terms.

**ARTICLE II**  
**WARRANTIES AND REPRESENTATIONS OF THE PARTIES**

2.1 Warranties of the Parties

The Parties hereto warrant and represent that they have the legal authority to enter into this Agreement.

2.2 Approval of the Governing Bodies

The Parties to this Agreement hereby certify that they have undertaken the necessary public procedures to approve and authorize the signatories to this Agreement to act on behalf of the Party executing this Agreement.

2.3 Obligation of Good Faith and Fair Dealing

The Parties each covenant to deal fairly and in good faith with the other to fulfill the covenants and requirements of this Agreement. Tigard has an existing water supply contract with the City of Portland that expires on July 1, 2016 unless extended. Costs of water will increase after July 1, 2016, because Portland is expected to embark on a large-scale capital improvement program and the rate to wholesale customers will increase to account for this capital construction. Also, the timing and method of withdrawal after July 1, 2016 will leave Tigard with less flexibility in extricating itself from the Portland contract. For these reasons, having the initial expansion project complete by July 1, 2016 is of paramount importance to Tigard. Lake Oswego recognizes Tigard's circumstances and agrees it will undertake its best efforts in good faith to meet this schedule for the initial expansion project.

## **ARTICLE III MANAGEMENT**

### **3.1 Managing Agency**

Lake Oswego shall be the Managing Agency to manage the operation, maintenance, repair and replacement of the existing Supply Facilities and to manage the planning, design and construction of the Initial Expansion of the Project. Lake Oswego shall be the contracting agency with consultants and contractors, and the named party on permits required from local, state, and federal regulatory agencies. Lake Oswego shall have the power to a) approve contracts and change orders subject to its purchasing rules, b) take such actions reasonably necessary during an emergency and c) other such powers as may be granted by the Parties from time to time. Lake Oswego shall be responsible for conducting the day-to-day business affairs including: payment of invoices, accounting, budgeting, operation and maintenance of the Supply Facilities, planning, project management, maintaining records, and other such duties as required. Tigard shall pay its share of costs in accord with the terms and conditions of this Agreement.

### **3.2 Technical Committee**

Each Party shall appoint two technical representatives to meet at intervals deemed appropriate for communication and coordination, and to keep the Project on schedule. The Technical Committee shall review all methods of contracting, requests for proposals, contracts, value engineering, designs, permit applications and costs. The Technical Committee will endeavor in good faith to make recommendations to the Managing Agency or Oversight Committee as the Technical Committee deems appropriate or where required by this Agreement. If

the Technical Committee cannot agree on a recommendation and is at impasse, the matter will be referred to the Oversight Committee. The Technical Committee must review and recommend to the Oversight Committee any proposal by Lake Oswego to retain an outside project manager.

### 3.3 Oversight Committee

Lake Oswego and Tigard shall each appoint two persons to the Oversight Committee. The members shall serve at the pleasure of the appointing Council. The Committee shall meet as deemed necessary by the Managing Agency or Technical Committee to keep the Project on schedule, but in no event less often than quarterly. The Oversight Committee shall review and the individual members of the committee shall present to their respective Councils proposed projects as identified in the Carollo Report or other proposed projects and related matters and budgets or funding requests. The Oversight Committee will endeavor in good faith to make recommendations to the Managing Agency or to the City Councils as the Oversight Committee deems appropriate or where required by this Agreement. If the Oversight Committee cannot agree by majority, then the tie vote shall be deemed a no vote so that no recommendation is made. The respective City Councils will then consider and vote on the matter. The Oversight Committee must review and approve any proposal to retain an outside project manager. Nothing herein shall be deemed a waiver of a Party's right to submit these matters to Dispute Resolution under Article XIV. The Managing Agency shall be responsible to staff and assist the Oversight Committee to comply with public meetings law and notice requirements as necessary.

### 3.4 Budgeting and Accounting

The Managing Agency shall prepare a budget specific to the capital and operating needs of the Supply Facilities for each Fiscal Year. The budget shall include an estimate of direct and indirect costs of personnel from either Party who are anticipated to provide services as part of the ultimately approved budget. A draft budget shall be prepared and distributed to the Technical Committee by March 1<sup>st</sup> for comment. A draft budget shall be prepared and distributed by the Managing Agency to the Oversight Committee by April 30th. The final budget must receive approval by each Party by June 30<sup>th</sup>. If any Party uses a biennial budget cycle, the dates above shall remain the same for the applicable budget preparation year and that Party shall update the budget amounts anticipated for the off year for the benefit of the other Party's budget process.

Each Party's proportionate share of the expenses of operation and maintenance of the Supply Facilities, including reserves for repair and replacements, permitting, design and construction and other expenses as may be incurred, shall be estimated, and set forth in the annual budget, and the amount estimated shall be recommended to be included as operating expenses, in each Party's individual adopted budget. If the budget includes accumulation of funds designated for a particular purpose or future use, such amounts shall be accumulated in a restricted or earmarked fund. The Managing Agency shall maintain an independent budget control procedure and provide budget reports at least quarterly to each of the Parties not later than 30 days after the end of each quarter. This report shall show

expenditures and receipts by budget item for each transaction through the last working day of the preceding quarter.

### 3.5 Asset Management Program

Within one year following substantial completion of the Initial Expansion, the Managing Agency shall create a thorough inventory all of the assets associated with the Supply Facilities, including physical facilities and real estate holdings. The inventory shall describe the current conditions of these Supply Facilities, their current value (replacement cost less depreciation), and repairs and replacements that may be necessary. The inventory shall include a schedule for repairs and replacement. The Technical Committee may propose policies to the Oversight Committee that guide, schedule and fund the repair and replacement of the assets and suggest amendments to the Supply Facilities Capital Improvement Program. The Oversight Committee shall then forward the draft inventory, any proposed policies and amendments to the Supply Facilities Capital Improvement Program to the Council of each Party for its approval. The program and policies shall be based on prudent utility practices and industry standards. Annually, the inventory shall be reviewed for additions and deletions.

### 3.6 Council Decisions

Approval by the Councils of each Party is required for:

- 3.6.1 Any sale, transfer, lease, exchange, or other disposition of any Property over, under, or upon Supply Facilities are located;
- 3.6.2 Entry to any mortgage, pledge, encumbrance or refinance of the Property or Supply Facilities;

- 3.6.3 Approval of any budget;
- 3.6.4 Approval of any nonemergency expenditure by the Managing Agency that has not previously been approved and budgeted and that exceeds the Managing Agency's authority under its purchasing rules to make the expenditure without the approval of its Council, or a capital improvement project not listed on the Supply Facilities Capital Improvement Program. If a capital improvement project has been budgeted and is part of the supply Facilities Capital Improvement Program, the Managing Agency shall be authorized to contract for all work necessarily related to deliver a complete and functioning project;
- 3.6.5 Approval of any decision to burden the Property or Supply Facilities with additional easements, licenses, or other encumbrances or to use the property for non-water related purposes.
- 3.6.6 Approval of any decision to change the use or the operation of the Property or Supply Facilities beyond adopted operational protocols;
- 3.6.7 Approval of the Initial Expansion or Long Term Expansion;
- 3.6.8 Approval of amendment of the Agreement to allow a new Party to join;
- 3.6.9 Approval of modification, alteration or dissolution of this Agreement;
- 3.6.10 Approval of a Supply Facilities Capital Improvement Program and amendments. When adopted, it will become Exhibit 5 and made part of this Agreement.

### 3.7 Use of Employees

To the extent that any Party uses its own employees in the performance of its duties under this Agreement, that entity shall be responsible for complying with all applicable state and federal laws and for all employment related benefits and deductions, workers' compensation premiums and pension contributions. Decisions regarding employees shall be the sole responsibility of the Party who employs him or her.

### 3.8 Audit, Record Keeping; Access to Records

The Managing Agency shall cause an annual audit to be conducted pursuant to the requirements of ORS 207.425, 297.455, 297.465 and 297.466. The Managing Agency shall maintain its books and records in such manner that the Supply Facilities and expenditures related thereto are separately stated and capable of review without being combined or mixed with the nonsupply facility assets.

The Managing Agency shall maintain all fiscal records relating to the Supply Facilities and Project in accordance with generally accepted accounting principles. In addition, the Managing Agency shall maintain any other records pertinent to the Supply Facilities and Project in such a manner as to clearly document the Managing Agency's performance hereunder. All such fiscal records, books, documents, papers, plans, and writings shall be retained by the Managing Agency and kept accessible as required by law.

The Managing Agency agrees that the other Party and its authorized representatives shall have access to all books, documents, papers and records of the Managing Agency which are directly related to the Supply Facilities and

Project for the purpose of making any audit, examination, copies, excerpts and transcripts.

**ARTICLE IV  
SYSTEM OWNERSHIP; ALLOCATION OF CAPACITY**

4.1 System Ownership

Upon execution of this Agreement, Tigard shall pay Two Million twenty five Thousand, Three Hundred Sixty-One Dollars (\$2,025,361.00) or such amount based on the valuation analysis set forth in Exhibits 1 and 6 to Lake Oswego, which Lake Oswego agrees to dedicate as working capital to the Project. Upon payment, Tigard shall be granted by this Agreement an equitable interest in the Supply Facilities as if it were a vendee under a land sale contract. Title shall transfer upon completion of the Initial Expansion of the existing Supply Facilities. The Parties shall each then own undivided interests in the Supply Facilities and Property. Such ownership shall be a percentage ownership in the Supply Facilities component as set forth in the exhibits in this Agreement. At the time of execution of this Agreement, the existing assets shall be valued as shown on Exhibit 1 and the contributing partner shall receive a credit for the asset value. If the current appraisals of the assets are not available at the time of execution of this Agreement, the Councils shall approve amendments to the exhibits to reflect updated valuation information when received and Tigard shall pay the difference to Lake Oswego as provided above. If the Initial Expansion is not constructed, Lake Oswego shall refund the amount of Tigard's payment to Lake Oswego plus interest at the LGIP rate within 30 days of the decision to abandon the Project and Tigard shall have no further ownership or equitable interest in the Lake Oswego Supply Facilities and Property. Tigard will execute any document required by

Lake Oswego to convey any interest Tigard may have in Lake Oswego Supply Facilities and Property.

Tigard's purchase of its percentage share of the Supply Facility assets shall be by capital contribution, mutually approved in kind contributions or payment of design, permitting and construction costs for the system expansion so that upon completion of the Initial Expansion, Tigard's contribution shall equal its percentage ownership as shown in Exhibit 7. Lake Oswego's percentage as shown in Exhibit 7 is based on its contributed assets, financial contribution to the Initial Expansion, mutually approved in kind contributions and other mutually agreed factors.

#### 4.2 Anticipated Ownership

At the completion of the Initial Expansion, the Parties' percentage ownership shall be allocated as set forth on Exhibit 7, attached hereto and incorporated by reference.

#### 4.3 Allocation of Capacity

At the completion of the Initial Expansion, Tigard's allocation of Capacity shall be 14 million gallons of water per day, and Lake Oswego's allocation of Capacity shall be 18 million gallons per day.

**ARTICLE V**  
**PROPERTY; CREATION OF TENANCY IN COMMON**

5.1 Creation of Common Ownership

Title to or easement 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 completion of the Initial Expansion. Tigard shall have an equitable interest as if it were a vendee under a land sale contract. Within 90 days following completion of the Initial Expansion, Lake Oswego will, by Warranty Deed, convey to Tigard an undivided proportionate interest as tenant in common in the Property as set forth on Exhibit 7, attached hereto and incorporated by reference. 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 the Parties' respective allocations of Capacity, according to the purchase price paid. Closing costs for the Lake Oswego transfer to Tigard shall be shared equally.

5.2 Ownership Interest/Use

5.2.1 Title to the Property held in the name of Lake Oswego until transfer shall be held in part for the use and benefit of Tigard to the extent of Tigard's interest as set forth in this Agreement. Lake Oswego water rights shall not be transferred under any of the real property transfers. Upon transfer, title to the Property shall be held in the name of each of the Parties in their respective undivided interest. The Parties agree that except as provided herein, the Property is dedicated for water supply purposes. The Parties intend that their relationship, with respect to the Property, be a tenancy in

common. A Tenancy in Common Agreement shall be executed and recorded at the time of transfer.

5.2.2 The Parties' responsibility for all maintenance, insurance and other land costs, shall be:

5.2.2.1 Until completion of the Initial Expansion and transfer of an undivided interest to Tigard, the existing Supply Facilities shall be used by Lake Oswego at its sole risk and cost to accommodate water supply uses.

5.2.2.2 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. Such costs shall be included in the monthly invoices under Section 7.1.4.

### 5.3 Covenant

The Parties declare that the Property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, occupied and improved subject to the limitations, restrictions, covenants and conditions set forth in this Agreement, all of which are declared to be in furtherance of a plan established for the purpose of constructing and operating the Supply Facilities. All such limitations, restrictions, covenants and conditions are intended to run with the Property, and to inure to the benefit of and be binding upon all parties having or acquiring any right, title, interest or estate therein. Other incidental uses shall be limited or restricted to the extent they conflict with water supply purposes.

### 5.4 Partition

Following transfer and so long as this Agreement is in effect, no Party shall seek

or obtain through any legal proceedings a judicial partition of the Property or sale of the Property in lieu of partition, without the prior written consent of the other Party.

**ARTICLE VI**  
**DESIGN AND CONSTRUCTION OF SUPPLY FACILITIES**

6.1 Preliminary Planning and Design

Tigard and Lake Oswego, by this Agreement, commit to design and construct the Initial Expansion, which shall include initially Water Treatment Plant, Clackamas River Intake Pump Station and Transmission Facilities with a design capacity of 32 mgd as generally described in the plan prepared by Carollo Engineers (“Carollo”) dated July, 2007, and to achieve completion by July 1, 2016, immediately commence:

6.1.1 Participation in necessary joint planning sessions for the Supply Facilities;

6.1.2 Contribution of their proportionate share of costs of preliminary design, preliminary engineering, permitting, and other fees as necessary and as set forth on Exhibit 7, attached hereto and incorporated by reference. The Supply Facilities shall accommodate subsequent expansion up to 38 mgd (Long Term Expansion). The general configuration map of the Property attached to the Agreement as Exhibit 3 shall allow the Parties to expand the treatment plant in the future. Lake Oswego shall retain a project team for permitting, design, and construction management of the Initial Expansion of the Supply Facilities.

6.2 Permit Applications

Lake Oswego, as the Managing Agency, shall be the lead agency in negotiating required permits for construction of the Supply Facilities.

6.2.1 Lake Oswego shall be responsible to obtain all other permits such as:

- 6.2.1.1 Section 404 Permits under the Clean Water Act through the Division of State Lands and the Corps of Engineers;
- 6.2.1.2 Any permit necessary from the Oregon Division of State Lands for use of submerged or submersible lands for intake and transmission, if that is in addition to the 404 Permit;
- 6.2.1.3 Any permit with the Water Resources Department regarding permit extension, amendment of a Water Management and Conservation Plan, or application of water to beneficial use in the Service Areas identified in the Carollo Report;
- 6.2.1.4 Any permit necessary from the Oregon Department of Fish & Wildlife, the United States Department of Fish & Wildlife or the National Marine Fisheries Service through consultation; and
- 6.2.1.5 Any other permit required for the project.
- 6.2.2 Lake Oswego shall be responsible for obtaining necessary land development permits. The Parties agree that improvements imposed by the land use permitting body shall be a Project cost. Additional amenities not required by the land use permitting body shall be paid for at the sole expense of the party requesting them. Lake Oswego, in its proprietary capacity, further agrees to, in good faith, assist and support Tigard in its efforts to secure the issuance of all permits for pumping and transmission facilities from locations within the Lake Oswego City limits and to enable Tigard to provide water from the Supply Facilities to Tigard users. The Parties acknowledge, however, that this Agreement cannot bind Lake

Oswego with relation to acts or decisions occurring in its regulatory authority, including, without limitation, the exercise of its regulatory authority to issue permits.

### 6.3 Construction

6.3.1 *Project Management.* During construction, Lake Oswego will, as Managing Agency, convene the Technical Committee at least bi-weekly to review project schedules and performance, progress payment requests, change orders and punch list items. Tigard may attend all contractor and consultant meetings.

6.3.2 *Progress Payments.* Progress payments, during design and construction, shall be billed monthly by Lake Oswego according to the proportionate allocation of system improvement costs for individual components of the Supply Facilities as set forth on Exhibit 7. For a construction contract or contract that materially includes construction within its scope that is included in the Supply Facilities Capital Improvement Program and approved budget, the Managing Agency may award such agreements after giving prior notice to each Council of the Project Engineer's estimate. Contracts not within the foregoing description or where the bid or proposed price exceeds the Engineer's estimate by 10% may not proceed unless each Council has approved. Within 30 days of invoice from Lake Oswego, Tigard shall remit the amount due, unless disputed. Any disputed amount shall be resolved in accordance with the Dispute Resolution Procedures of Article 14 below. However, notwithstanding the

foregoing, during construction no dispute between the Parties shall cause cessation or delay of work by the contractor. If the contractor threatens to suspend or terminate work because of a dispute over nonpayment, the Parties hereto agree to make such payments to Lake Oswego to resolve contractor issues and shall expressly reserve all rights regarding the ultimate allocation of costs or obligations paid to the contractor which shall be resolved by dispute resolution.

6.3.3 *Post Construction.* Following construction, the Technical Committee shall meet as needed to review and recommend to the governing bodies on matters related to warranty or other contract performance issues.

**ARTICLE VII  
OPERATION AND MANAGEMENT**

7.1 Supply Facilities

7.1.1 *Management.* Lake Oswego shall have responsibility as Managing Agency to manage, operate, repair and replace the Supply Facilities until such time as the Parties agree otherwise. The Managing Agency may perform work with its own forces and charge the other Party therefore or by contract with another party. Additional work or charges outside the approved budget shall require unanimous consent of the Parties.

7.1.2 *Operation and Maintenance Costs.* The costs of operation and maintenance shall be allocated between the Parties according to water delivered from the water treatment plant to each Party's connection point to their distribution systems measured in hundred cubic feet (ccf) imposed on the Supply Facilities multiplied by the operations and maintenance expense rate in \$/ccf. The method for calculating the rate and water use determination of payment shall be agreed to by the Councils based on the budget and anticipated water use considering the previous 12 months' water use.

For the first year when Tigard draws water, the Parties will not have prior usage data from Tigard's use of the Supply Facilities. Therefore, the Parties agree that an estimated cost per ccf shall be determined based upon the budget and applied to all Tigard volumes with invoice on a monthly basis. At the end of the first year, actual unit costs will be calculated and reconciled as set forth in 7.1.4.

7.1.3 *Renewal, Repair and Replacement Costs.* The Parties shall budget for renewal, repair and replacement costs as provided in Section 3.4. The Parties shall make those payments as required for renewals, repair and replacement proportional to that Party's ownership interest in the Supply Facility component.

7.1.4 *Billing and Payment.* Each Party shall receive an invoice monthly from the Managing Agency representing one-twelfth of the allocated operations and maintenance budget amount for that Party. The invoice may also include required payments for renewal, repair, and replacement under Section 7.1.3 or the Managing Agency may send a separate invoice. Payment is due to the Managing Agency within 30 days of receipt of the invoice. On March 1<sup>st</sup> of each year, the Managing Agency will send an invoice calculating actual water usage as compared to estimated annualized expenditures in the budget and reconcile them. The respective Parties will pay (or receive credit for overpayment toward the next invoice) based upon this reconciliation. As soon as reasonably possible after June 30<sup>th</sup> of each year, the Managing Agency will conduct a similar reconciliation and the Parties will pay or receive credit for overpayment as appropriate on the next invoice in the new fiscal year.

## 7.2 Property Management.

The Parties agree that the property over, under, or upon which the Supply Facilities are constructed shall be operated and managed as follows:

- 7.2.1 *Duties of the Managing Agency.* The Managing Agency shall have the responsibility and authority to perform the following functions and may make decisions with respect to such matters as to the Property unless otherwise provided in this Agreement,
- 7.2.1.1 *Operation, Maintenance, Repair, and Replacement.* To contract for maintenance, repair and cleaning of the Property pursuant to an approved budget, contract, or other approval of the Parties as may be required by the terms of the Agreement.
- 7.2.1.2 *Insurance.* To obtain or renew a policy of property insurance insuring the Property against loss or damage by fire and other hazards covered by a standard policy of fire insurance with extended coverage endorsements written for the full replacement value of the Property. The Parties shall also obtain or renew a policy or policies of public liability and property damage insurance with a single limit of not less than \$2,000,000. The policies shall name the Parties as co-insureds.
- 7.2.1.3 *Assessments.* To collect and deposit the assessments and other charges due from the Parties into an account established for the Property; to mail written notice to any Party who is more than 30 days delinquent in payment of any assessments or charges; and to mail written notice to the Parties for additional assessments whenever it appears that the funds on hand shall be insufficient to cover future expenses.
- 7.2.1.4 *Payment of Expenses.* To pay when due the expenses of the Property, and all other expenses or payments duly authorized by the Parties.

- 7.2.1.5 *Records.* To maintain complete and accurate records of all receipts and expenditures for the Parties.
- 7.2.1.6 *Reimbursement of Expenses.* Unless approved in writing by the Oversight Committee, no Party shall be compensated for services related to nonbudgeted matters where contingency or other funds in the approved budget are available. Otherwise, approval by each Council is required. However, a Party shall be reimbursed for out-of-pocket expenses.
- 7.2.1.7 *Payment of Costs.* Amounts owed by each Party for expenses related to the Property shall be invoiced as provided in Section 7.1.4.

## **ARTICLE VIII SUPPLY FACILITIES**

### **8.1 Use of Supply Facilities**

The Parties shall each use the Supply Facilities in a manner consistent with prudent water utility practices and to minimize interference with each other's use of its respective share of Capacity to meet its demands. Prudent practices shall include a mutual commitment to conservation and use of water without waste implemented in each Party's Water Management and Conservation Plan. When the Initial Expansion is completed and the Parties are using the Supply Facilities, the Parties anticipate that instances of overuse of Capacity by a Party will be rare and the Parties shall resolve such instances on a case-by-case basis. If a new member is added or if a third party is supplied by the Supply Facilities so that additional demands or capacity are placed thereon, then, unless caused by system operation conditions not caused by the overusing party, any use of 10% or greater by either Party (or third party user) than its share of Capacity for two consecutive years or three out of five years shall be overuse. The overusing Party (or third party user) shall compensate the other party at a lease rate as may be fairly and equitably agreed upon by the parties. In lieu of the above lease rate or in combination with it, the Parties may agree to construct the Long Term Expansion of the Project or reduce demand so that overuse shall cease to occur.

### **8.2 Mutual Forecast Submittal**

In order to make timely, reasonable and prudent judgments concerning meeting respective demands for capacity, the need to lease capacity, the ability to lease capacity, and the terms and conditions of any such Lease, the Parties shall each

submit to the other commencing February 1, 2016 and February 1 of each fifth year thereafter, a 10-year planning forecast. The planning forecast shall set forth the respective projected water demands, capacity to serve that demand, and identify any deficiencies in capacity by year for the 10-year period. Demand shall include any sale of water from capacity agreed to or reasonably anticipated within the ten-year time frame. The capacity requirement for the Supply Facilities shall consist of the average of five consecutive days containing the highest average peak day demands (mgd) imposed by the Parties, for the summer period of May 15 to October 31. The Parties shall agree on an appropriate course of action as they deem reasonably available and prudent, under the forecasted circumstances, including, but not limited to, leasing capacity from one to the other, both within and without the timeframe of such planning forecasts.

### 8.3 Surface Water Rights

Surface Water Rights shall remain in the name of Lake Oswego. By execution of this Agreement, Lake Oswego agrees to hold these permits or certificates for the benefit of Tigard and Lake Oswego to the extent of the rights of each under this Agreement. Development and beneficial use by the Parties of water authorized in the Surface Water Rights of Lake Oswego, but undeveloped as of the date of this Agreement, shall accrue to the benefit of all Parties, to the extent of their rights under this Agreement, without regard to ownership.

### 8.4 Water Treatment Plant Facilities

Except during a curtailment event for any reason, each Party shall have or obtain Capacity in the Water Treatment Plant Facilities, to serve the Demand of the Party

during the Summer Period and the Winter Period up to the respective allocations. The Capacity requirement for Water Treatment Plant Facilities shall consist of the average of the five (5) consecutive days containing the peak day demand (mgd) imposed on the Supply Facilities by the Party for each Summer Period and Winter Period. Capacity in the Water Treatment Plant Facilities may be obtained by purchase of excess existing Capacity, capacity expansion of the Water Treatment Plant Facilities and/or leasing of Capacity from another Party.

#### 8.5 Transmission System

The Parties agree to maximize the use of the existing Transmission System for the benefit of the Parties before construction of new transmission facilities.

The Parties have agreed on connection points for delivery of water from the Transmission System as set forth in Exhibit 3, which exhibit may be updated and revised by resolution of each Party's Council. To the extent that a Party needs additional Capacity in the Transmission System, the Parties agree to sell or lease available Capacity in the Transmission System prior to construction of new transmission facilities. When expansion of the Transmission System is required, the Parties shall follow the procedures as set forth in Article 9.

#### 8.6 Finished Water Storage

The Parties agree to construct shared storage facilities where efficient and economic for both Parties. Notwithstanding this provision, each Party shall construct and operate separate adequate finished water storage within its distribution system to meet their respective operating and emergency conditions as set forth in the Operations Manual as required under Article 12. To the extent

that a Party cannot do so, it may make a request to the other Party for supplemental storage. If the Party providing supplemental storage agrees to provide such storage, then the Party receiving such supplemental storage shall compensate the other Party as mutually agreed.

## **ARTICLE IX EXPANSION RIGHTS AND REQUIREMENTS**

### **9.1 Expansion Requirements**

The Parties agree that use of the Supply Facilities by the Parties should be accomplished first by utilizing the Capacity in the Supply Facilities to serve the needs of the Parties. The Supply Facilities should be expanded only after the Parties are projected to be using all Capacity, within a reasonable planning horizon or at such other times as the Parties deem appropriate. In determining the appropriate time to begin expansion of the Supply Facilities, the Parties shall consider the time required to provide for environmental reviews, design, permits and construction. Therefore, the Parties agree to lease Capacity to another Party as provided for in Article 10 to reasonably and prudently defer capital improvements and costs thereof.

### **9.2 New Surface Water Rights and Expansion**

The Parties agree that finding opportunities to acquire new water rights (surface or ground) may be of great significance to their long range needs. This may include the purchase of existing Surface or Ground Water Rights or application for permits for surface, ground or stored water rights. The Parties agree that new sources shall be acquired jointly in proportion to the Party's ownership interest in the Supply Facilities. If a Party elects not to participate in the acquisition of additional water, the other Party may proceed individually.

### **9.3 Expansion Rights in the Supply Facilities**

The Parties shall use reasonable and prudent utility standards in determining as to when and to what size the Supply Facilities should be expanded. Such

determination shall take into consideration the Demand requested by the Parties, the Capacity of the Water Supply Facilities, prudent utility planning standards and the available Surface Water Rights, and Transmission System owned or capable of being leased or expanded by the Parties. Based on the Planning Forecast of Section 8.2, a Party shall provide written notice to the other Party of its desire to expand the Supply Facilities. The Parties shall place the proposed project on the Capital Improvement Program. The intent of the Parties is to place the proposed project on the CIP for a period of five years. In the third year of the CIP, the Parties shall each decide whether to accept or reject participation in the expansion. Notice by a Party to participate in an expansion shall be in writing and specify the percent participation in the expansion. Each Party shall have the right to participate in the expansion in at least the same percentage level as the Party's percent ownership in the Supply Facilities at the time of the proposed expansion. A party may proceed individually if the other elects not to participate so long as the non-participating Party is held harmless from financial obligation.

*9.3.1 Long Term Expansion of Water Treatment Plant.* Notwithstanding Section 9.3 on expansion of the Supply Facilities, the Parties recognize that Lake Oswego has or will contribute to design and construction of Supply Facility components to achieve capacity of up to 38 mgd. If either Party proposes such Long Term Expansion of the Treatment Plant, Lake Oswego will determine if it wishes to participate and the amount of Capacity it desires, which may be the entire expansion amount. Lake Oswego will notify Tigard of its decision, which shall be conclusive. Depending upon Lake Oswego's

decision, the Parties will then negotiate a Project Agreement for the Long Term Expansion, which shall specify, among other things,

- a. whether all or any portion of the expanded capacity is sold to Tigard; or
- b. whether Lake Oswego builds the expanded capacity with its funds and leases the capacity to Tigard upon such terms and conditions as the Parties agree; or
- c. whether Tigard builds the expanded capacity with its funds subject to Lake Oswego's option to buy back all or part of the expanded capacity upon three years' written notice at the depreciated replacement cost of the expansion plus interest at the Municipal Bond Index from the date of substantial completion; and
- d. Such other mutually agreeable terms including adjustment of ownership interests in other Supply Facility components to match treatment plant capacity allocations of the Parties.

#### 9.4 Other Assets

There may arise other improvements which do not directly in and of themselves, provide for expansion of the Supply Facilities. In such circumstances, the Parties shall mutually determine the appropriate financial participation by each of the Parties. They shall consider the purpose for the construction of the asset and the benefits to be received by each of the Parties from the asset in determining the financial participation requirement of each. A party may proceed individually if the other elects not to participate so long as the non-participating Party is held

harmless from financial obligation.

#### 9.5 Bonita Road Pump Station

Tigard's Bonita Road Pump Station is or will be capable of providing water from Tigard to Lake Oswego if necessary. The Parties acknowledge this is beneficial to Lake Oswego in those circumstances, but the frequency is difficult to predict. If this Pump Station is used for the benefit of Lake Oswego as the Parties agree, Lake Oswego shall pay Tigard's costs to supply water, including Tigard's costs to purchase water from other entities, as if it were a short-term lease. Tigard will invoice Lake Oswego on a monthly basis in such circumstances.

## **ARTICLE X LEASING**

### 10.1 Leasing

As provided for in Article 8, the Parties shall lease to the other Capacity in the Surface Water Rights and Supply Facilities to the extent available according to the planning forecast.

### 10.2 Purpose

The purpose of this Article is to acknowledge the rights of the Parties to lease from each other the unused portion of their respective 14 mgd and 18 mgd allocations of the total 32 mgd Capacity of Initial Expansion to be constructed, to establish the conditions under which such leasing may occur and to acknowledge the right to lease future capacity from each other based on future expansion of the Supply Facilities depending upon conditions and circumstances then and there existing and when future shares of capacities are known. This section is not intended to limit the Parties from otherwise agreeing on leasing of supply capacity to each other. If the Supply Facilities are expanded to 38 mgd, these lease provisions shall apply to the second increment of capital improvement.

### 10.3 Right to Lease

Lake Oswego shall have the right to lease to Tigard and Tigard to lease from Lake Oswego such unused capacity of its 18 mgd as may be determined by Lake Oswego to be reasonably available and prudent to be leased to Tigard pursuant to section 8.2 or as they may otherwise agree. Tigard shall have the right to lease to Lake Oswego and Lake Oswego to lease from Tigard the unused capacity portion of its 14 mgd capacity as may be determined by Tigard to be reasonably available

and prudent to be leased to Lake Oswego pursuant to section 8.2 or as they may otherwise agree.

#### 10.4 Term

The term of any lease for Supply Facilities shall be for a minimum of one (1) year and a maximum of ten (10) years and upon such conditions for renewal as the Parties determine. A lease shall be a short-term measure that allows the Parties to defer expansion or new construction of Supply Facility components and to provide Parties with a near-term stable planning horizon. The Parties do not intend to have perpetual renewal terms.

#### 10.5 Lease Payments

The lease payment for Supply Facilities shall be determined by utilizing the Depreciated Replacement Cost Value of the asset amortized over the remaining Book Depreciation Life of the asset at an interest rate equal to the Municipal Bond Index rate plus 200 Basis Points at the year of the lease payment or a comparable index. The lease payment shall be fixed for lease terms of five (5) years or less. For lease terms of greater than five (5) years, the lease payment shall be recalculated every five (5) years in accordance with this Section 10.4.

#### 10.6 Effective Date of Leases

The effective date for leases set forth in this Article 10 shall be on April 1, following the adoption of this Agreement and every April 1, thereafter.

#### 10.7 Curtailement of Leasing Capacity

The Parties agree that a condition of any lease shall be that the lessee Party shall be provided Capacity to the same extent that Capacity is available to serve the

lessor Party's Demand. Curtailment of Capacity resulting from reduced availability of water for all new water supplies developed after the effective date of this Agreement shall be shared equally among the parties.

## **ARTICLE XI SALES TO OTHERS**

Except for the Existing Wholesale Customers, existing mutual aid agreement, or extension of service to service areas identified in the Carollo Report, neither Party may contract for the sale or use of the Supply Facilities to any other entity or person who is not a Retail Customer of any Party without 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.

## **ARTICLE XII OPERATIONS MANUAL**

### **12.1 Operations Manual**

Not later than 180 days from the date of Substantial Completion of the Initial Expansion, the Parties shall adopt an Operations Manual for the Supply Facilities, which shall include, but not be limited to, agreed protocols and methodology to provide for water quality, treatment standards and protocols, and for the equitable, effective and efficient operation of the Supply Facilities in accordance with generally accepted utility practices regarding the operation, management, capital improvements, and expansion of all aspects of the Supply Facilities. The Operations Manual may be updated as required. The Operations Manual shall also provide for an Operations Committee (“Operations Committee”), which shall consist of one designee of each of the Parties, as set forth in Section 12.2 below. Not more than 30 days after substantial completion of the Initial Expansion each Party shall appoint one person to develop the Operations Manual.

### **12.2 Operations Committee**

Each Party shall appoint at least one person technically knowledgeable in utility system operations or engineering to the Operations Committee. A Party may allow other attendees, but in no event shall a Party have more than one vote in making a recommendation to the Oversight Committee created under Section 3.3. The Operations Committee shall report to the Oversight Committee not less often than quarterly. The Parties may choose to designate the Technical Committee as the Operations Committee.

### **12.3 Curtailement**

The Operations Manual shall reference each Party's Water Management and Conservation Plan. The Parties agree that if an emergency or water shortage requires restriction on the deliverable supply of new Capacity developed after the effective date of this Agreement , the reduction in available water shall be shared equally among the Parties.

**ARTICLE XIII**  
**WITHDRAWAL, TERMINATION OF MEMBERSHIP, SALE OF**  
**ASSETS AND DISSOLUTION**

13.1 Complete or Partial Termination of Interest

Any Party may elect to terminate all or part of its participation in this Agreement and withdraw from the Supply Facilities as designated (full or partial) by giving written notice of its desire to terminate to the remaining Party(ies), and stating a date for termination which shall be not less than two (2) years from the date of notice. The remaining Party receiving notice of termination shall have the first option to purchase the terminating interest. If Tigard terminates in whole or in part, the purchase price shall not include any value for water as those water rights remain with Lake Oswego. If Tigard completely terminates from this Agreement, it shall not receive water unless Lake Oswego agrees in writing. If Tigard partially terminates, its 14 mgd capacity shall be adjusted to reflect its retained, proportionate interest. The Parties shall meet for the purpose of establishing the price for the terminated interest. The meeting shall be held within 90 days following receipt of notice of termination.

Notice to the selling Party of the other Party's intent to buy all or a portion of the terminating interest shall be given no later than three (3) months after receipt of the written notice of the Party's desire to terminate. If the remaining Party purchases less than the full portion of the terminating interest, the Parties also agree that any unpurchased interest may be sold to another local government party so long as that other local government party becomes subject to all terms and conditions of this Agreement. The terminating Party shall use best efforts to find

another local government partner to buy the remaining unpurchased interest or to assign or lease capacity so as not to unduly burden the remaining party. Consent by the remaining Party for another local government party to purchase, take assignment or lease the Supply Facilities to this Agreement shall not be unreasonably withheld. Any assignment or lease of an unpurchased interest to another local government shall not relieve the Party from its obligations under this Agreement. Negotiations of the terms of sale, assignment or lease to another local government Party shall include the non-terminating Party as to those terms which directly impact its operational and financial interest.

### 13.2 Sale of Assets

A Party may offer to sell to the other Party its ownership interest in an identified portion of the Supply Facilities (e.g., a percent of the Transmission System). Notice of the proposed sale shall be given to the other Party by the Party wishing to sell. Such notice shall specify the material terms and conditions of the sale. The terms and conditions of Section 13.1 shall apply. The Party may also assign or lease the unpurchased interest to another local government Party. Consent to such assignment or lease shall not be unreasonably withheld or relieve the Party from its obligations under this Agreement.

### 13.3 Valuation of Interest

The Parties shall meet to agree upon a price within 90 days of the receipt of notice under Sections 13.1 or 13.2. The price shall be fixed by determining the terminating/selling Party's interest in the subject assets using the Depreciated Replacement Cost Value. Nothing herein shall prevent the Parties from agreeing

upon a price through negotiation and unanimous consent. Sales, assignments or leases to third parties are not subject to the valuation formula of this Section.

#### 13.4 Payment

The payment price for the subject interest shall be paid in full on the date of termination set forth in the notice of intent to terminate/sell or award of arbitration or court. Interest shall commence to accrue from the date of agreement arbitration or judgment at the Local Government Investment Pool rate. If a Party fails to pay the purchase price in full at the date of termination, then the terminating/selling Party shall have the right to sell or transfer or assign the subject interest to any other government entity as provided in Section 13.1 or 13.2.

#### 13.5 Default and For Cause Termination

The failure of a Party to perform any duty imposed upon it by this Agreement shall constitute a default. The non-defaulting Party shall have the right to give the defaulting Party a written notice of default, which shall describe the default in reasonable detail and state the date by which the default must be cured, which date shall be at least 60 days after receipt of the notice of default, except in the case of a failure to advance funds, in which case the date shall be 30 days after receipt of the notice of default.

13.5.1 Opportunity to Cure. If within the applicable period described in Section 13.5 the defaulting Party cures the default, or if the failure is one (other than the failure to make payments) that cannot in good faith be corrected within such period and the defaulting Party begins to correct the default within the applicable period and continues corrective efforts with reasonable diligence

until a cure is effected, the notice of default shall be inoperative, and the defaulting Party shall lose no rights under this Agreement. If, within the specified period, the defaulting Party does not cure the default or begin to cure the default as provided above, the non-defaulting Parties at the expiration of the applicable period shall have the rights specified in Section 13.5.2.

13.5.2 Rights Upon Default. If the defaulting Party has not cured the default as provided in Section 13.5.1, it shall have no voting rights under this Agreement until the default has been cured. In addition, the non-defaulting Party may pursue any other remedy available at law or in equity against the defaulting Party, including but not limited to, an action for damages, costs of obtaining substitute water or other performance.

#### 13.6 Dissolution of the Agreement

This Agreement may be dissolved by mutual agreement. Upon dissolution, the Parties shall agree on a Dissolution Plan and schedule to wind down and dissolve the business affairs. Unless modified by the Dissolution Plan, the dissolution shall be effective only after all debts and obligations are paid or provision for payment is made. Each Party shall assume a share of the debts and obligations in proportion to their ownership in the Supply Facilities unless the instrument or transaction that created the debt or obligation specified otherwise. The Parties shall execute those documents necessary to vest proportionate ownership of the Supply Facilities and Property in each Party and execute a post dissolution water supply agreement and a management agreement for the Supply Facilities and Property. Nothing herein shall prevent a Party from accepting cash or other

consideration in lieu of continued proportionate ownership in the Supply Facilities and Property. The cost of dissolution shall be treated as an operation and maintenance expense.

13.7 Post Initial Expansion Water for Tigard.

After substantial completion of the Initial Expansion, if Lake Oswego elects to terminate this Agreement, or if the Parties mutually agree to dissolve this Agreement, Lake Oswego agrees to provide Tigard with treated water sufficient to supply 14 million gallons per day so that Tigard is always assured of having sufficient source to supply its capacity share and usage of the Supply Facilities. If Tigard is allocated additional capacity in the Supply Facilities by the Long Term Expansion, the provisions of this section shall apply to that increment of water. Negotiation of a mutually agreeable water supply agreement shall be a condition precedent to any termination of this Agreement by Lake Oswego or Dissolution Plan.

13.8 Unreasonable Withholding of Consent.

Unreasonable withholding of consent shall be those reasons other than financial considerations, availability of alternate water sources, water usage characteristics, water service territory, water demand forecasts, technical or operational expertise, history as a recognized local government water service provider, ownership, control or operation by or for a private entity or person, and other relevant matters considered in reasonable and prudent utility management.

## **ARTICLE XIV DISPUTE RESOLUTION**

### 14.1 Dispute Resolution

The Parties hereby agree that resolution of any disputes shall follow the steps as set forth in Section 14.2. However, nothing shall prevent the disputing parties (Disputing Parties) from waiving any of the steps by mutual consent.

### 14.2 Dispute Resolution Steps

#### **Step One: (Negotiation)**

The City Manager or other persons designated by each of the Disputing Parties shall negotiate on behalf of the Party they represent 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 City Manager or other designated persons and ratified by the governing bodies, which shall be binding upon the Disputing Parties.

#### **Step Two: (Mediation)**

If the dispute cannot be resolved within thirty (30) days at Step One, the Disputing Parties shall submit the matter to non-binding mediation. The Disputing Parties shall attempt to agree on a mediator. If they cannot agree, the Disputing Parties shall request a list of five (5) mediators from an entity or firm providing mediation services. The Disputing Parties shall mutually agree on a mediator from the list provided. Any common costs of mediation shall be borne equally by the Disputing Parties. If the issue is resolved at this step, a written determination of such resolution shall be signed by each City Manager or other

designated persons, and ratified by the governing bodies, which shall be binding on the Disputing Parties.

### **Step Three (Arbitration)**

After exhaustion of the preceding processes, all disputes or claims arising out of this Agreement shall be submitted to binding arbitration under the rules and processes of U. S. Arbitration and Mediation of Portland, Oregon or similar mutually agreed process. Each Disputing Party shall select an arbitrator and the two shall appoint a third arbitrator. All costs of arbitration shall be borne equally. The Oregon Rules of Civil Procedure relating to discovery and the Oregon Evidence code shall apply. The decision of the panel shall be binding. Nothing herein shall prevent the Disputing Parties from selecting a single arbitrator by agreement.

#### 14.3 Legal Fees

Each Disputing Party shall bear its own legal and expert witness fees at all stages of proceedings, including any appeals.

**ARTICLE XV  
COMPLETION OF INITIAL EXPANSION OF THE SUPPLY  
FACILITIES**

15.1 Modification to Agreement

Within three years after completion of the Initial Expansion, the Oversight Committee shall undertake a review of all agreements and operations and to consider the need for any modification to the terms and conditions of this Agreement. At the recommendation of the Oversight Committee, the Councils for the Parties may consider:

15.1.1 Modification to 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.

**ARTICLE XVI**  
**NOTICES**

Any notice herein required or permitted to be given shall be given in writing and effective when actually received by hand delivery or by the United States mail, first class postage prepaid, addressed to the Parties as set forth below. The Parties shall notify the Managing Agency of any change of address or title for receipt of notices under this Agreement.

**LAKE OSWEGO:**

The City of Lake Oswego  
Attention: City Manager  
380 A Avenue  
P.O. Box 369  
Lake Oswego, OR 97034

**TIGARD**

City of Tigard  
Attention: City Manager  
13125 SW Hall Blvd.  
Tigard, OR 97223

## **ARTICLE XVII GENERAL PROVISIONS**

### 17.1 Instruments of Further Assurance

From time to time, at the request of a Party, each Party shall, without further consideration, execute and deliver such further instruments, and shall take such further action as may be reasonably required to fully effectuate the purposes of this Agreement.

### 17.2 Entire Agreement

This Agreement embodies the entire agreement and understanding between the Parties hereto with respect to the Supply Facilities and supersedes all previous agreements and understandings relating to the Supply Facilities except as provided herein. The Parties agree that the existing Agreement for Water Service effective July 1, 1983 shall terminate as of the date Initial Expansion is substantially complete.

### 17.3 Assignment, Sale or Transfer

No Party shall have the right to sell, transfer or assign its interest in this Agreement (or any portion thereof) or asset(s), without the prior written consent of the other in accordance with requirements of this Agreement. No Party may sell, transfer, assign its interest or sell water to an existing wholesale customer in the other Party's service area as set forth on Exhibit 2 without the prior written consent of the other Party in accordance with the requirements of this Agreement.

### 17.4 Severability

In case any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality and

enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

17.5 Counterparts

This Agreement may be executed in any number of counterparts and by the Parties or separate counterparts, any one of which shall constitute an Agreement between and among the Parties.

17.6 Headings

The Article, section and subsection headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

17.7 Force Majeure

No Party shall be considered in default in the performance of its obligations under this Agreement to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or in the future, which is beyond the reasonable control of the affected Party, including, but not limited to, Acts of God, earthquake, labor disputes, civil commotion, war events beyond the reasonable control of the Parties, such as regulatory restrictions or requirements, permit issuance, and the like. In the event a Party claims that performance of its obligations was prevented or delayed by any such cause, that Party shall promptly notify the other Parties of that fact and of the circumstance preventing or delaying performance. Such Party so claiming a cause of delayed performance shall endeavor to the extent reasonable to remove the obstacles which preclude performance.

17.8 Consolidation, Merger, Annexation

17.8.1 Change of organization is defined as the consolidation or merger of a Party with another city under ORS 222.610 *et seq.*

17.8.2 Any new entity created by change of organization involving a Party to this Agreement shall require prior consent of the other Party as to the successor or surviving entity's entitlement to be an owner of the Supply Facilities, based on the entity's legal, financial and technical ability to assume the original Party's obligations under this Agreement. Such consent shall not be unreasonably withheld. If the surviving or successor entity is approved, the original Party/Parties' obligations and rights hereunder shall be binding upon and inure to the benefit of the surviving or successor entity, and that entity shall be subject to all obligations of this Agreement.

17.8.3 Annexation of or provision of service to an area beyond that area identified for each party in the Carollo Report, and any transfer of a Party's territory to a Water Authority formed by one or more cities, water districts, or both, shall require the prior consent of the other Party, which shall not be unreasonably withheld considering capacity and demands and other system factors. Annexations or service to identified areas shall not require consent.

17.9 Survival of Covenants

Any provision of this Agreement which, by its terms has or may have application after the expiration or earlier termination of this Agreement, including all

covenants, agreements, and warranties, shall be deemed to the extent of such application to survive the expiration or termination of this agreement.

17.10 Indemnity

To the extent permitted by the Constitution and laws of Oregon, each Party agrees to defend, indemnify and hold harmless the other from and against any and all actual or alleged claims, damages, expenses, costs, fees, including but not limited to attorney, account, paralegal, expert and escrow fees, fines, environmental costs and/or penalty (collectively “costs”), which may be imposed upon, claimed against, or incurred or suffered by the Party, unless and to the extent it was resulting from an individual Party’s negligence or willful misconduct.

17.11 No Third Party Beneficiaries

The Parties hereto are the only Parties to this Agreement and the only persons or entities entitled to enforce its terms.

IN WITNESS WHEREOF the Parties have dated and signed this Agreement.

**CITY OF LAKE OSWEGO**

**CITY OF TIGARD**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Dated

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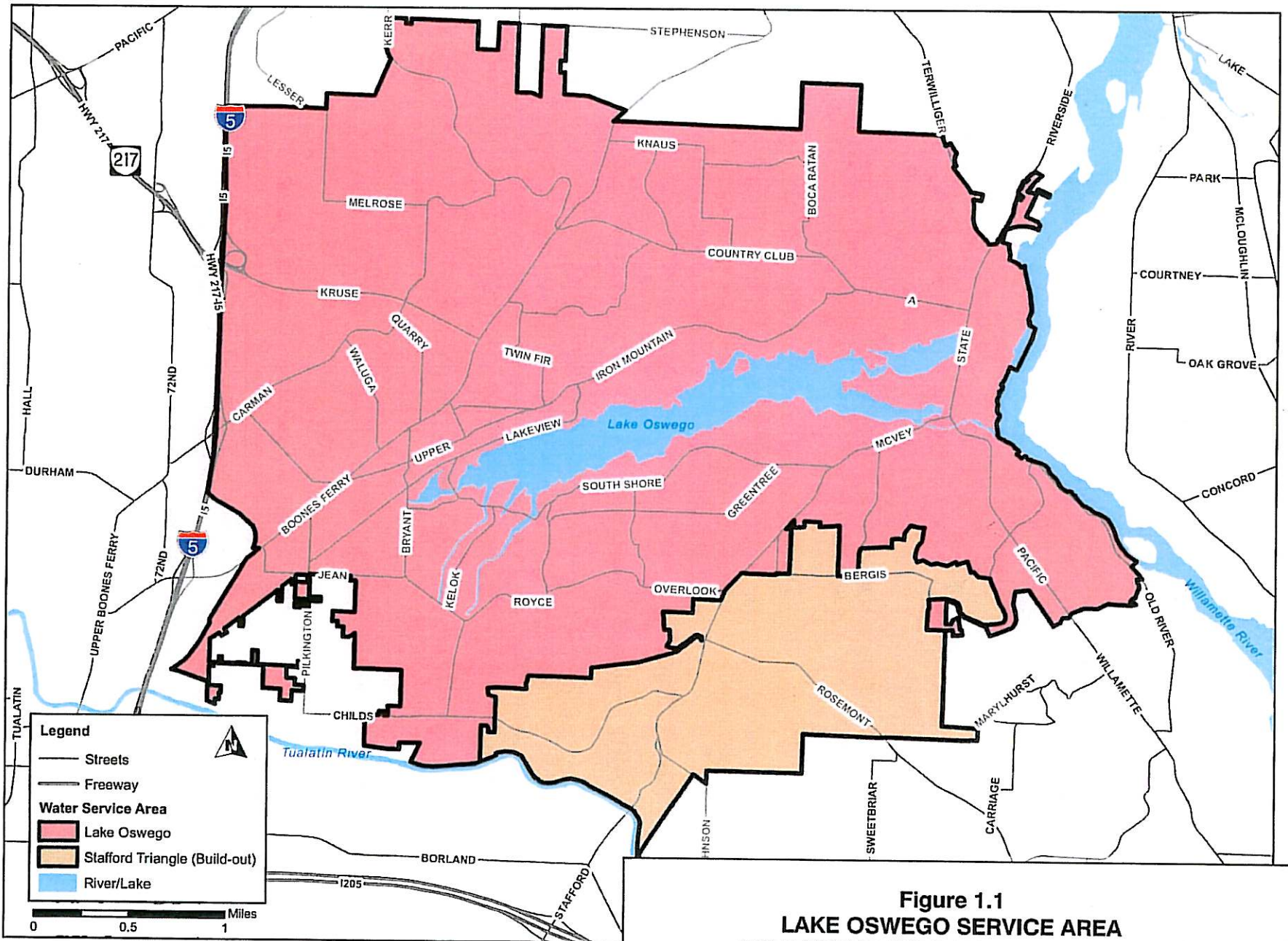


- 1 Interim Supply to Lake Oswego (not allocated)
- 2 Raw Water Intake (not allocated)
- 3 Raw Water Transmission
- 4 Water Treatment Plant: Land
- 5 Water Treatment Plant: Structures & Equipment (not allocated)
- 6 Finished Transmission Main (not allocated)
- 7 Waluga Reservoir: Land (Reservoir Property)
- 8 Waluga Reservoir: Structures & Equipment (not allocated)
- 9 Bonita Pump Station (not allocated)
- 10 Computer System/Software
- 11 General Plant

**Exhibit 1**  
Existing Real Property, Supply Facility Components and Valuation

Current Year      2008 Assumed Escalation      5%  
May 2008 ENR CCI      8140 Projected July 2008 ENR CCI      8,208

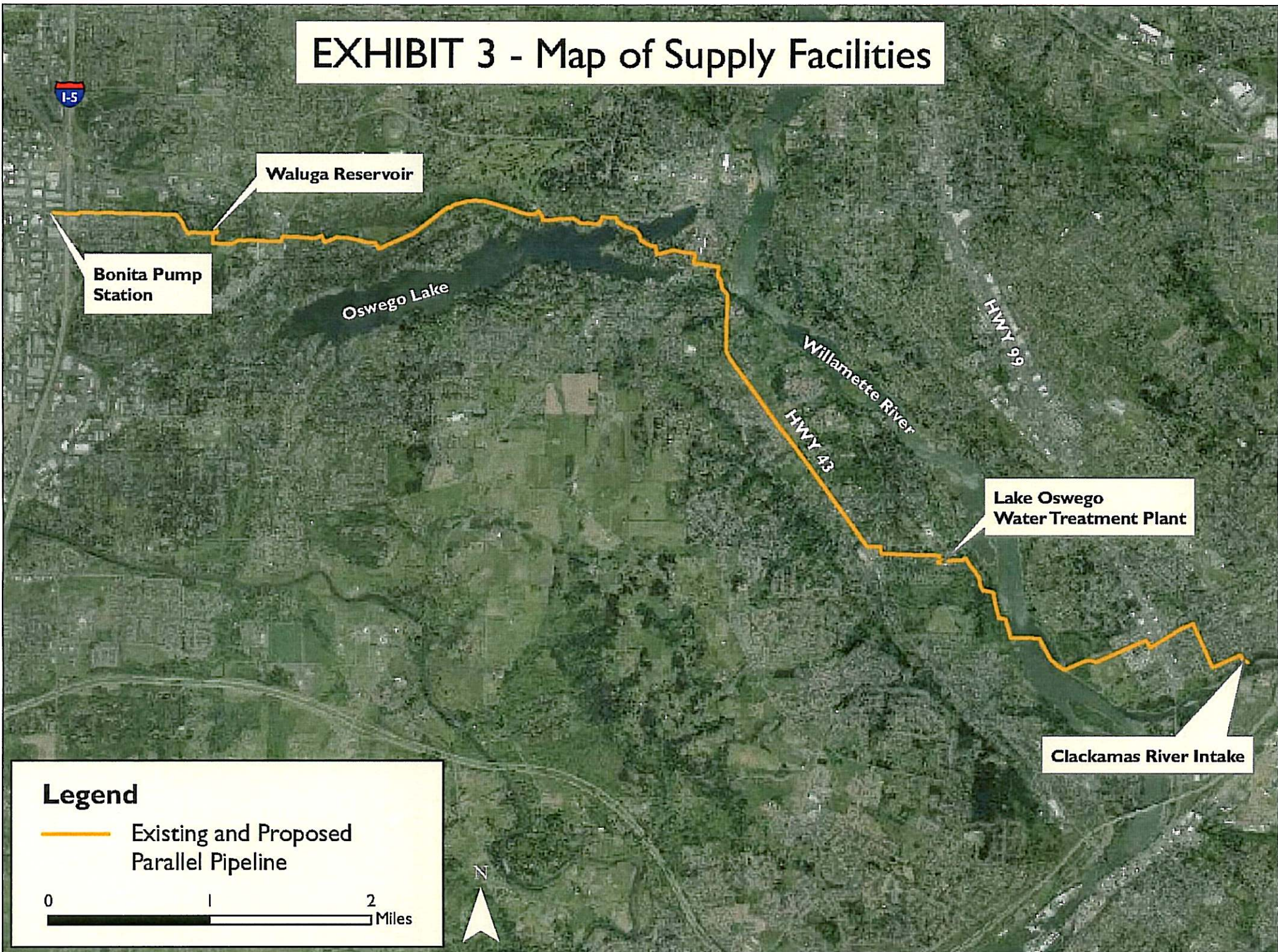
Allocation	Asset Description	Acquisition Date	Acquisition Amount	Original ENR CCI	July 2008 CCI	Today Acquisition Amount	Useful Life (in years)	Depreciation Amount	Value Today
<b>Water Treatment Plant Land</b>									
4	Plant Site	6/30/1968	\$ 83,797	1,155	8,208	\$ 595,491	Land	\$ -	\$ 595,491
	<b>Sub Total</b>		<b>\$ 83,797</b>			<b>\$ 595,491</b>		<b>\$ -</b>	<b>\$ 595,491</b>
<b>Raw Water Transmission</b>									
3	Raw Water Transmission	6/30/1969	\$ 590,137	1,269	8,208	\$ 3,816,979	100	\$ 1,488,622	\$ 2,328,357
3	Pipeline Easements	6/30/1969	\$ 22,000			\$ 142,295	100	\$ 55,495	\$ 86,800
	<b>Sub Total</b>		<b>\$ 612,137</b>			<b>\$ 3,959,274</b>		<b>\$ 1,544,117</b>	<b>\$ 2,415,157</b>
<b>Distribution Storage</b>									
7	Reservoir Property	6/29/1980	\$ 8,416	3,237	8,208	\$ 21,340	Land	\$ -	\$ 21,340
	Waluga Reservoir	3/30/1983	\$ 1,281,427	4,066	8,208	\$ 2,586,753	100	\$ 646,688	\$ 1,940,065
	<b>Sub Total</b>		<b>\$ 1,289,843</b>			<b>\$ 2,608,093</b>		<b>\$ 646,688</b>	<b>\$ 1,961,405</b>
<b>Computer Systems/Software</b>									
10	SCADA System Upgrade	6/30/1991	\$ 180,722	4,835	8,208	\$ 306,791	20	\$ 260,773	\$ 46,019
10	Scada Software Upgrade	6/30/1999	\$ 33,500	6,059	8,208	\$ 45,381	20	\$ 20,421	\$ 24,959
	<b>Sub Total</b>		<b>\$ 214,222</b>			<b>\$ 352,172</b>		<b>\$ 281,194</b>	<b>\$ 70,978</b>
<b>General Plant</b>									
11	Other	6/8/1982	\$ 17,000	3,825	8,208	\$ 36,479	20	\$ 36,479	\$ -
11	Vehicles	6/8/1986	\$ 24,000	4,295	8,208	\$ 45,864	20	\$ 45,864	\$ -
11	Vehicles	6/30/1999	\$ 20,500	6,059	8,208	\$ 27,770	20	\$ 12,497	\$ 15,274
	<b>Sub Total</b>		<b>\$ 61,500</b>			<b>\$ 110,114</b>		<b>\$ 94,840</b>	<b>\$ 15,274</b>
<b>Land Additions</b>									
						2006 RMV (land Only)			
7	Waluga Res #1	1976				\$ 329,841	Land	\$ -	\$ 329,841
7	4800 Carmen Dr	1992				\$ 237,346	Land	\$ -	\$ 237,346
7	Vacant Parcel	1992				\$ 253,485	Land	\$ -	\$ 253,485
4	4260 Kenthorpe Way	1966				\$ 680,014	Land	\$ -	\$ 680,014
4	WTP Property	1979				\$ 132,652	Land	\$ -	\$ 132,652
4	4245 Mapleton Dr	1989				\$ 258,916	Land	\$ -	\$ 258,916
4	4305 Mapleton Dr	1995				\$ 258,916	Land	\$ -	\$ 258,916
4	4315 Mapleton Dr	1989				\$ 258,916	Land	\$ -	\$ 258,916
4	South of Plant Site	1989				\$ 47,430	Land	\$ -	\$ 47,430
<b>Clackamas River Intake &amp; Pump Station</b>									
	Structure	6/30/1969	\$ 121,980	1,269	8,208	\$ 788,961	60	\$ 512,825	\$ 276,136
	Pumps & equipment	6/30/1969	\$ 50,825	1,269	8,208	\$ 328,734	40	\$ 320,515	\$ 8,218
	Piping and Valves	6/30/1969	\$ 20,330	1,269	8,208	\$ 131,494	60	\$ 85,471	\$ 46,023
	Electrical, I&C, HVAC	6/30/1969	\$ 10,165	1,269	8,208	\$ 65,747	40	\$ 64,103	\$ 1,644
	Seismic Upgrades	1980	\$ 131,000	6,538	8,208	\$ 164,458	60	\$ 76,747	\$ 87,711
	Pumps	1980	\$ 40,000	3,237	8,208	\$ 101,425	40	\$ 70,998	\$ 30,428
	Pumps No. 4	2002	\$ 153,833	6,538	8,208	\$ 193,123	40	\$ 28,968	\$ 164,154
	Intake Fish Screens	2002	\$ 1,352,600	6,538	8,208	\$ 1,698,060	20	\$ 509,418	\$ 1,188,642
	Piping and Valves	1980	\$ 10,000	3,237	8,208	\$ 25,356	60	\$ 11,833	\$ 13,523
	Electrical and HVAC	1980	\$ 21,000	3,237	8,208	\$ 53,248	40	\$ 37,274	\$ 15,974
	Intake Land								
<b>Water Treatment Plant</b>									
	Site Work	6/30/1969	\$ 155,915	1,269	8,208	\$ 1,008,451	60	\$ 655,493	\$ 352,958
	Concrete and Buildings	6/30/1969	\$ 479,739	1,269	8,208	\$ 3,102,930	60	\$ 2,016,904	\$ 1,086,025
	Pumps	6/30/1969	\$ 4,197	1,269	8,208	\$ 27,146	40	\$ 26,467	\$ 679
	Mechanical Equipment	6/30/1969	\$ 125,931	1,269	8,208	\$ 814,516	40	\$ 794,153	\$ 20,363
	Piping and Valves	6/30/1969	\$ 191,895	1,269	8,208	\$ 1,241,168	60	\$ 806,759	\$ 434,409
	Electrical, I&C, HVAC	6/30/1969	\$ 191,895	1,269	8,208	\$ 1,241,168	40	\$ 1,210,139	\$ 31,029
	Filter Media, and Underdrains	6/30/1969		1,269	8,208	\$ -	40	\$ -	\$ -
	Chemical Addition	6/30/1969		1,269	8,208	\$ -	40	\$ -	\$ -
	Clear Well	6/30/1969		1,269	8,208	\$ -	60	\$ -	\$ -
	Solids Dewatering Facilities	6/30/1969		1,269	8,208	\$ -	60	\$ -	\$ -
	Miscellaneous	6/30/1969	\$ 11,993	1,269	8,208	\$ 77,570	20	\$ 77,570	\$ -
	Engineering	6/30/1969		1,269	8,208	\$ -	60	\$ -	\$ -
	Expansion	1980	\$ 80,221	3,237	8,208	\$ 203,411	60	\$ 94,925	\$ 108,486
	Site Work	1998	\$ 510,000	5,920	8,208	\$ 707,094	60	\$ 117,849	\$ 589,245
	Expansion	1980	\$ 333,224	3,237	8,208	\$ 844,933	60	\$ 394,302	\$ 450,631
	Seismic/ADA/Code	2000	\$ 498,498	6,221	8,208	\$ 657,706	60	\$ 87,694	\$ 570,012
	Expansion	1980	\$ 86,391	3,237	8,208	\$ 219,056	60	\$ 102,226	\$ 116,830
	Pumps and Equipment	1999	\$ 507,925	6,059	8,208	\$ 688,061	40	\$ 154,814	\$ 533,248
	Expansion	1980	\$ 67,879	3,237	8,208	\$ 172,116	60	\$ 80,321	\$ 91,795
	Mechanical	2001	\$ 641,126	6,343	8,208	\$ 829,616	40	\$ 145,183	\$ 684,433
	Expansion	1980	\$ 357,906	3,237	8,208	\$ 907,517	60	\$ 423,508	\$ 484,009
	Expansion	1980	\$ 178,954	3,237	8,208	\$ 453,761	60	\$ 211,755	\$ 242,006
	Electrical	1999	\$ 66,247	6,059	8,208	\$ 89,742	40	\$ 20,192	\$ 69,550
	Electrical & Instrumentation	2001	\$ 568,564	6,343	8,208	\$ 735,721	40	\$ 128,751	\$ 606,970
	Expansion	1980	\$ 83,923	3,237	8,208	\$ 212,798	60	\$ 99,306	\$ 113,492
	Filters & Structural Work	2001	\$ 416,886	6,343	8,208	\$ 539,450	40	\$ 94,404	\$ 445,046
	Sodium Hypochlorite System	1998	\$ 282,793	5,920	8,208	\$ 392,081	40	\$ 98,020	\$ 294,061
	Lime Storage/Feed System	1998	\$ 1,000,158	5,920	8,208	\$ 1,386,677	40	\$ 346,669	\$ 1,040,008
	CO2 Storage/Feed System	1998	\$ 238,357	5,920	8,208	\$ 330,472	40	\$ 82,618	\$ 247,854
	Alum Storage/Feed System	1998	\$ 522,800	5,920	8,208	\$ 724,840	40	\$ 181,210	\$ 543,630
	Clear Well Baffle	1996	\$ 107,293	5,622	8,208	\$ 156,642	40	\$ 46,993	\$ 109,650
	Solids Dewatering Lagoons	1999	\$ 1,084,518	6,059	8,208	\$ 1,469,144	40	\$ 330,557	\$ 1,138,587
	Expansion	1980	\$ 45,664	3,237	8,208	\$ 115,787	60	\$ 54,034	\$ 61,753
	Engineering	1998	\$ 311,460	5,920	8,208	\$ 431,826	60	\$ 71,971	\$ 359,855
	Engineering	1999	\$ 120,000	6,059	8,208	\$ 162,558	60	\$ 24,384	\$ 138,174
	Engineering	2000	\$ 126,653	6,221	8,208	\$ 167,103	60	\$ 22,280	\$ 144,822
	Engineering	2001	\$ 332,000	6,343	8,208	\$ 429,608	60	\$ 50,121	\$ 379,487
<b>Finished Water Transmission</b>									
	24-inch Finished Water Main	6/30/1969	\$ 473,456	1,269	8,208	\$ 3,062,292	100	\$ 1,194,294	\$ 1,867,998
	WTP Transmission Main	6/30/1969	\$ 42,618	1,269	8,208	\$ 275,651	100	\$ 107,504	\$ 168,147
	North Shore-Iron Mtn. Pipelines	6/30/1970	\$ 534,142	1,381	8,208	\$ 3,174,619	100	\$ 1,206,355	\$ 1,968,264
	Upper Dr.-Iron Mtn. 24 Inch Pipeline	6/30/1985	\$ 575,398	4,195	8,208	\$ 1,125,810	100	\$ 258,936	\$ 866,873
	Cathodic Protection System	4/1/2000	\$ 486,097	6,221	8,208	\$ 641,344	40	\$ 128,269	\$ 513,075
			\$ 2,111,711						\$ 5,384,358
	<b>Sub Total</b>		<b>\$ 15,866,160</b>			<b>\$ 34,828,504</b>		<b>\$ 13,665,082</b>	<b>\$ 26,547,780</b>
<b>TOTAL ASSETS</b>									
			<b>Acquisition Value</b>			<b>2008 Value</b>		<b>Calculated Depreciation</b>	<b>Total Current Value</b>
			<b>\$ 18,127,659</b>			<b>\$ 42,453,649</b>		<b>\$ 16,231,922</b>	<b>\$ 31,606,085</b>



**Figure 1.1**  
**LAKE OSWEGO SERVICE AREA**  
 JOINT WATER SUPPLY SYSTEM ANALYSIS  
 CITY OF LAKE OSWEGO AND TIGARD WATER SERVICE AREA



# EXHIBIT 3 - Map of Supply Facilities



**Bonita Pump Station**

**Waluga Reservoir**

Oswego Lake

Willamette River

HWY 99

HWY 43

**Lake Oswego Water Treatment Plant**

**Clackamas River Intake**

**Legend**

— Existing and Proposed Parallel Pipeline

0 1 2 Miles

N

**Exhibit \_\_4\_\_.**

**City of Lake Oswego Water Rights Summary**

<b>Permitee</b>	<b>Application/Permit#</b>	<b>Authorized amount (cfs/mgd)</b>	<b>Authorized place of use</b>	<b>Amount developed/certificate# (cfs/mgd)</b>	<b>Amount undeveloped (cfs/mgd)</b>	<b>Priority Date</b>	<b>Source water</b>
City of Lake Oswego	S43365/S32410	50/32.32	City of Lake Oswego and City of Tigard <sup>1</sup>	25/16.16/C78332	25/16.16	3/14/1967	Clackamas River
City of Lake Oswego	S50819/S37839	9/5.81	City of Tualatin and Tigard Water District <sup>2</sup>	0	9/5.81	7/5/1973	Clackamas River

- Notes: 1. The City of Lake Oswego is currently seeking extensions of time to fully use all water authorized under permit Nos. S32410, S37839 and S43246. Proposed Final Orders (PFO) approving the City's request are pending at Water Resources Department (WRD) in Salem. It is expected protests will be filed on the PFO's once they are issued for public comment.
2. The City has submitted its water management and conservation plan to WRD and no public comments on the plan were filed during the 30-day public comment period. An approved WMCP is required before the City can access any portion of undeveloped water noted above.

<sup>1</sup> Permit Amendment T-8358 amended Permits S32410 and S37839 to include the City of Tigard as authorized places of use.

<sup>2</sup> Permit S37839 was granted to the City of Lake Oswego for the benefit of the Cities of Tualatin and the Tigard Water District.

**Exhibit 5**

**Supply Facilities Capital Improvement Program**

**(To be added following adoption by each Council)**

**EXHIBIT \_6\_  
DETERMINATION OF 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				\$ 1,911,733	\$ 1,832,454	0.00%	\$ -
Clackamas River Intake Land*	2 2E 20CA	15001	Bk 173, Pg 900-902	\$	\$	14/38	\$
Computer System/Software				\$ 214,222	\$ 70,978	14/38	\$ 26,150
Finished Water Transmission				\$ 2,111,711	\$ 5,384,358	0.00%	\$ -
General Plant				\$ 61,500	\$ 15,274	14/38	\$ 5,627
Raw Water Transmission				\$ 612,137	\$ 2,415,157	14/38	\$ 889,795
Waluga Reservoir				\$ 1,281,427	\$ 1,940,065	0.00%	\$ -
Waluga Reservoir: Land							
Reservoir Property	2 1E 07 AD	03100	Doc 72-06414	\$ 8,416	\$ 21,340	14/38	\$ 7,862
Waluga Res #1*	2 1E 07AD	00700	Doc 76-36977	n/a	\$ 329,841	14/38	\$ 121,520
4800 Carmen Dr*	2 1E 07AD	00900	Doc 92-063461	n/a	\$ 237,346	14/38	\$ 87,443
Vacant Parcel*	2 1E 07AD	01000	Doc 92-063461*	n/a	\$ 253,485	14/38	\$ 93,389
Water Treatment Plant				\$ 9,731,005	\$ 11,489,095	0.00%	\$ -
Water Treatment Plant Land							
4260 Kenthorpe Way - parcel 1*	2 1E 24BD	00300	Bk 688, Pg 581	\$ 83,797	\$ 595,491	14/38	\$ 219,391
4260 Kenthorpe Way - parcel 2*	2 1E 24BD	00401	Doc 79-35248	n/a	\$ 601,670	14/38	\$ 221,668
xxxx Mapleton Dr*	2 1E 24BD	01200	Doc 89-10200	n/a	\$ 132,652	14/38	\$ 48,872
4245 Mapleton Dr*	2 1E 24BD	01400	Doc 89-13210	n/a	\$ 258,916	14/38	\$ 95,390
4305 Mapleton Dr*	2 1E 24BD	01300	Doc 95-33429	n/a	\$ 306,346	14/38	\$ 112,864
4315 Mapleton Dr*	2 1E 24BD	01500	Doc 89-13210	n/a	\$ 258,916	14/38	\$ 95,390
<b>Totals</b>			* less 2006-108190	\$ 16,015,948	\$ 26,143,384		\$ 2,025,361

\*Net reproduction cost for these properties are based on an assessor's 2006 real market value (RMV). These costs are not included in the total original cost.

Tigard and LO will need to complete an updated appraisal of land values, and resolve which parcels are material to this agreement before determining the final buy-in cost.

Allocation % based on 14 mgd of 38 mgd capacity allocated to Tigard.

Net Reproduction Cost includes escalation by ENR less depreciation.

**EXHIBIT \_7\_**  
**ALLOCATION OF SYSTEM IMPROVEMENT COSTS TO THE PARTIES**

	Cost of Improvement (in 2006 \$) *	Lake Oswego		Tigard	
		Allocation (%)	Share (\$)	Allocation (%)	Share (\$)
<b>Water Treatment Plant</b>					
- Existing Plant	n/a	100.00%	n/a	0.00%	\$ -
- 32 mgd Expansion	\$ 39,430,000	2/16	\$ 4,928,750	14/16	\$ 34,501,250
- 38 mgd Expansion	n/a	100% **	n/a	0.00%	\$ -
<b>Raw Water Intake and Pump Station</b>	\$ 4,440,000	24/38	\$ 2,804,210	14/38	\$ 1,635,789
<b>Raw Water Transmission Main</b>	\$ 23,920,000	24/38	\$ 15,107,368	14/38	\$ 8,812,633
<b>Finished Water Transmission Main</b>					
-Reaches 7-10	\$ 38,220,000	24/38	\$ 24,138,947	14/38	\$ 14,081,053
-Reaches 11-12	\$ 17,020,000	8/22	\$ 6,189,091	14/22	\$ 10,830,909
<b>Storage (MG)</b>	\$ 4,010,000	1.0/2.5	\$ 1,604,000	1.5/2.5	\$ 2,406,000
<b>Bonita Road Pumping Station</b>	\$ 1,700,000	0.00%	\$ -	100.00%	\$ 1,700,000
<b>Total Costs</b>	\$ 128,740,000	42.54%	\$ 54,772,366	57.46%	\$ 73,967,634
* - Project costs are presented in 2006 dollars. Actual cost will depend on project start and completion dates. ** - Second (6 mgd) expansion is currently assigned to Lake Oswego. Contract provides for potential reallocation by agreement.					