



**Lake Oswego Tigard Water Partnership
Summary of Special Oversight Committee Meeting
Regarding New Intergovernmental Agreement
June 20, 2022**

- City of Lake Oswego:** **Oversight Committee:** Mayor Buck, Councilor Manz
Staff: Erica Rooney, City Engineer/Public Works Director; Bret Bienerth, Water Treatment Plant Manager; Martha Bennett, City Manager; Jason Loos, City Attorney; Susie Anderson, Administrative Assistant
- City of Tigard:** **Oversight Committee:** Councilor Goodhouse, Councilor Newton
Staff: Brian Rager, Public Works Director; Shelby Rihala, City Attorney; Steve Rymer, City Manager
- Guests:** Clark Balfour from Cable Huston

Councilor Goodhouse called the meeting to order at 1:09 pm in the Willow Room at Lake Oswego Operations Center, 17601 Pilkington Road, Lake Oswego.

Ms. Rooney explained the special meeting would provide an opportunity to focus on the Intergovernmental Agreement (IGA) modifications. Clark Balfour of Cable Huston was hired to help ensure all the technical aspects and other issues of concern were addressed. The goal was to have a new IGA that adequately covered the history and provided a clear road map for moving forward. Mr. Balfour and staff had met and this meeting was to update the committee on progress to date, flush out areas of concern, and set direction for him as he drafts the new IGA. **Councilor Goodhouse** asked if Mr. Balfour was working off of the existing agreement or the proposed agreement drafted by Tigard councilors and staff. **Mr. Balfour** explained he and staff had met a couple times. The existing agreement had provided a rough road map on how to move forward post construction with operation and maintenance. So far, they had been working from the current original agreement but they also reviewed the Tigard version that included provisions based on the existing agreement. His approach was to start with the existing agreement, dropping the construction and design provisions and anything historical that didn't pertain to going forward but it could go a different direction if the committee wanted. He added Tigard's draft agreement was part of the discussion.

Mr. Balfour stated in meeting with staff they identified parts of the IGA that were solid from a staff perspective and needed guidance from the committee on various issues identified. The purpose of the work was to get the agreement retooled and ready for council review sometime in early Fall. It would be necessary for this group to meet again to review the draft and provide guidance to move forward. He hoped this meeting would provide direction in terms of shaping the document. **Councilor Goodhouse** noted that he was up for re-election this year, Councilor Newton would not be seeking re-election and Councilor Manz would term out. Mayor Buck would be the only member remaining so they

were anxious to have the process wrapped up before there were new representatives on the committee. **Mr. Balfour** thought that wouldn't be a problem. He added there was some flexibility in the schedule so additional meetings could be scheduled if necessary. The end goal would be to develop a new operations agreement based on best practices and historical performance. He added that operations had worked well since 2016 when Tigard started receiving water. His hope was to determine if there needed to be a brand-new agreement or if the existing agreement with changes would be ok. In his experience councils tend to be more comfortable with working from something that has been tried and tested. He asked for the committee's thoughts. **Councilor Goodhouse** stated some things were working but Tigard wanted more equal say in matters. Their intent was to change the committee in to some sort of governing body so there would be equal say on things like curtailment or decision making. Tigard auditors had commented that there wasn't a true agreement in place that gives Tigard an equal voice on issues. He acknowledged things were working now but wanted to have something in place to guide future councils. **Councilor Manz** agreed that councils like continuity and acknowledged the conversation had been going on for quite some time and Tigard's areas of concern, like curtailment. She opined from a Lake Oswego perspective the management, flexibility, and nimbleness during crisis had proven there was good operational management in place. The bottom line wasn't operational management but more what the board looks like and how specific issues and concerns Tigard has would be addressed, such as curtailment and budget. The IGA should be more managerial than operational was what she was hearing from other committee members. She liked the way operations were going now but supported some fine tuning of the agreement. **Mayor Buck** acknowledged Tigard's concerns and wanted to be sure a document was developed that would address those. He didn't think the governing or format of the committee needed to change and was hopeful the objectives could be accomplished through the existing structure since it was working well. He noted the points on the agenda and thought they addressed the issues raised in the Tigard draft agreement. He was hopeful they could amend the document and reach a shared outcome that all could agree on. **Councilor Newton** thought the existing agreement could be amended. She cautioned against getting in the weeds on operations and noted there were existing documents that the agreement could refer to but if those documents were amended then the agreement would also need to be amended. She stated the main issues for Tigard were around decision making, and unanticipated capital improvement projects not in the CIP/budget. Those were things that pointed to a true partnership with equal decision making where appropriate. **Mr. Balfour** stated the current agreement was a two-party agreement with key matters retained by the councils, matters delegated to the managing agency, and this committee that provides oversight and would now be called the Partnership Committee. He asked if they would like to maintain the type of decisions currently at the council level or did they want the councils to delegate additional powers to this committee to make decisions. **Mr. Balfour** asked Councilor Goodhouse to clarify if they wanted more equal decision making at the committee level or at the council level. **Councilor Goodhouse** replied each council delegates representatives to the committee so there should be more decision making at the Partnership Committee level. He referenced comments from their auditors regarding having made such a large investment but not having decision making authority. Tigard would like more say and decision making at the committee level. **Councilor Newton** acknowledged there were some things that couldn't appropriately be delegated from council. She stated the councilors appointed to the committee were more immersed and therefore have more knowledge. Taking decisions to the council level requires educating the other councilors on the issue. She acknowledged the committee members responsibility to advocate to their respective councils and referenced the recent discussion regarding funding of backup generators and how they advocated to their colleagues the importance of moving forward with that. She felt it would work better if the committee had as much decision making as practical and acknowledged there were some things that couldn't be delegated from the councils.

She also recognized that budget authority would go to the City of Lake Oswego. **Mr. Rymer** addressed the audit comments from the past two years and stated they had been broad. He stated the final draft amended document would be shared with the auditors before adoption to make sure it met their requirements. **Mr. Balfour** clarified the auditors didn't classify it as a material weakness but made a note that a new, more robust operations agreement was needed and was because the current agreement states that its required or did they focus in on the governance question? **Councilor Newton** responded the auditor's comments were that the Tigard community had made a significant investment and with the facilities constructed it was time to have an agreement in place to address how the cities would work together. **Councilor Goodhouse** added the auditors didn't specify governance but that Tigard should have an equal voice in decision making regarding their investment. **Ms. Rihala** read from auditors report "although the project is in commercial operation at fiscal year-end, no governing agreement exists to clearly stipulate ownership of the assets and responsibilities for repair and maintenance costs going forward. We recommend both municipalities continue to enter discussions and draft a governance agreement to ensure the intent of both parties for their respective rights and obligations for operational decisions, sharing of operating revenues and expenses, and respective responsibilities for capital asset management, maintenance and repairs are exclusively stated. Such an agreement will also help guide each municipality in the appropriate accounting treatment for the related assets". **Mr. Balfour** found their statement helpful.

Mr. Balfour referenced the meeting document and explained the table of contents from the existing agreement was the basis for the new draft agreement. He noted there were a lot of things in the existing agreement that still fit or may need to have minor edits or corrections but the substance wouldn't need to change. He referenced Article 3 which addressed management. He explained reference to the Management Committee referred to the management staff from both cities. The section also addressed the Partnership Committee which referred to the elected officials to act as the liaison to their respective Councils. He thought the title Partnership Committee sent a better message than Oversight Committee. The committee currently was delegated specific things like CIP, budget, and capital replacement. He thought there were a few areas to address. The first was capital repair and replacement, anticipated expenditures that are approved, in the budgets, and in the CIP. The second was emergency situations, whether budgeted or not, there must be action taken to continue to provide water to citizens. The Partnership Committee should be involved in terms of notice, status updates, cost estimates but management decisions would be made and implemented. The third category was capital replacement not in the CIP or budget, something is needed but not an emergency. He opined this was an area where the Partnership Committee should have input on expenditures over \$500K. **Mr. Balfour** asked if there was an example of that scenario. **Mr. Bienert** responded pump four at the River Intake had recently failed. It had to be removed by crane and transported to the manufacturer for repair. The total cost was over \$100K. It wasn't something that had been planned for but it had to be repaired because it had failed. **Mr. Balfour** confirmed that there were other functioning pumps but this pump had to be repaired because it was part of the redundant system. **Councilor Goodhouse** asked if that type of scenario would come before the body as input or decision making. **Mr. Balfour** asked if they would like to review and recommend to the managing agency and/or council or did they want to be able to say yes or no and if it was yes or no, the councils would have to delegate that authority to the Partnership Committee. He understood that Lake Oswego didn't want to take it that far but Tigard did. **Councilor Goodhouse** affirmed Tigard would like to have authority to make decisions. He referred to the draft agreement Tigard had previously prepared and acknowledged during an emergency staff would need to act but felt there should be an outline of communication protocols to the committee during an emergency. He felt parameters should be set indicating what decisions could be made by

management during an emergency and what decisions would go to the committee. **Mr. Balfour** asked how the communications plan currently worked. **Ms. Bennett** responded there was a joint emergency operations plan in place which included communication protocols and said there wouldn't be time in an emergency to convene the committee members. **Ms. Rooney** stated during the ice storm Mr. Bienerth contacted her and then she contacted Mr. Rager and they contacted their respective City Managers. The City Managers were responsible for contacting and communicating status to the councilors. The same protocols occurred during the chlorine shortage event. She reiterated there were communication plans outlined in the Water Management and Conservation Plan (WMCP), Emergency Response Plan (ERP), and Operations Plan. **Ms. Bennett** said she would be reluctant to recommend putting communication protocols in the IGA because there needed to be flexibility. **Councilor Manz** asked if the two agencies would be able to communicate if regular communication services were down. **Ms. Rooney** responded the Risk and Resiliency Plan (RRP), a co-document to the ERP identified certain scenarios like that. She acknowledged it was a vulnerability that all cities face. **Councilor Manz** asked if the communication protocols in each city's ERP were the same. **Mr. Rymer** replied they both were similar. **Ms. Bennett** stated the chlorine shortage was a great example. The technical staff met frequently and kept city managers informed. She acknowledged Tigard's concern about Lake Oswego doing something that would harm Tigard but pointed out during the ice storm Lake Oswego needed Tigard to provide water Lake Oswego, the partnership was a two-way street. She recommended putting communication protocols in the operational plans and amend those as necessary and keep it out of the IGA. **Councilor Newton** agreed and stated what they were trying to do in the new IGA was to name the plans. They weren't proposing communications details in the new IGA. She referred back to the discussion regarding the committee's involvement addressing the \$100K expense to repair the pump at the River Intake. She felt Tigard should somehow be made aware of those types of situations. She thought expenditures over \$500K should come before the Partnership Committee and referenced the study for backup power at the Water Plant and River Intake. She said it was helpful to hear the options, get staff recommendations, and present it to their council with the recommendation to use ARPA funds to cover the expense. **Mr. Balfour** said during an emergency situation continued updating of information, as it becomes available, could be incorporated in the communications plan. In emergency situations information would be in real time so councils could be informed and able to make decisions. Regarding lesser expenses that were necessary but not planned, there would be notice of the issue, the plan to address it and operate in the meantime. There would be time to inform the committee and determine if action were necessary. **Councilor Newton** asked if that would be for expenditures over \$500k, under or both. **Mr. Balfour** replied that was his suggestion but dollar thresholds could be considered. **Councilor Newton** referred to the backup power study and thought that type of scenario was more complicated because the different options were presented and needed to be considered. She asked if that type of situation would warrant calling a special meeting. **Ms. Rooney** reminded her every quarter the committee meets and Mr. Bienerth presents an operations activity report that includes issues like the pump repair. The secondary power study was conducted and the results were brought to the committee for their input. In an emergency, for example, if another pump failed and it would be necessary to receive water from another Clackamas River water provider, then an emergency meeting would be held to make sure the committee was agreeable because rates would be increased. **Councilor Newton** asked if they were addressing emergency situations or dollar amount. **Ms. Bennett** stated in an emergency staff would act and inform the committee and need to distinguish between emergent and emergency. When there would be time for the committee to convene, that would happen. **Councilor Goodhouse** recognized things were working great currently but their concern was the agreement didn't state the details of the decision making process. **Mr. Rymer** said that's where the hierarchy of the documents would come in. The IGA is more broad strokes and references the plans by name where the

details of process and decision making is outlined. In the future, changes could be made to the plans without needing to amend the IGA. **Councilor Manz** voiced her support for the hierarchy of documents and noted as technology or engineering may change over the course of time, the plans could be changed vs. the IGA and its restrictive nature. **Councilor Goodhouse** opined if the committee were a governing body they could make changes. **Councilor Manz** reminded they had all seen and reviewed the plans. **Councilor Goodhouse** stated if it were a governing body they would have the power to re-examine and make changes to the plans. **Councilor Newton** said they've had opportunity to ask questions and get clarification on the plans but would be reluctant to let the committee decide how to operate a water plant. **Councilor Manz** felt the questions she had about the operating agreements had been answered to her satisfaction and felt that type of decision making wasn't necessary for this group. **Councilor Newton** agreed having the opportunity to review the plans and ask questions was sufficient and thought the IGA was mostly about formalizing how decisions would be made. **Ms. Bennett** added it should also address how disputes would be resolved. **Councilor Newton** concurred. **Mayor Buck** clarified what was being proposed was the Management Committee would work together on the plans and then the Partnership Committee would review and comment. **Ms. Rooney** stated Lake Oswego and Tigard staff worked together to develop the WMCP because it applied to both cities. The same was done for the ERP for the plant and subsequently the ERP for both city's distribution systems, all using the same consultant. The three plans look very similar. When the Operations Plan was developed in 2017, Kari Duncan, the plant manager worked closely with John Goodrich from Tigard. It was developed by the Management Committee, then brought to the Oversight Committee for review, advisement and feedback. **Councilor Newton** suggested when new plans are developed the Partnership Committee might be involved to vocalize or suggest any overriding policies or practices that ought to be included, to make sure the Management Committee didn't head down a road that wasn't reflective of what the Partnership Committee and councils would want. **Councilor Goodhouse** asked if the practice of sharing plans with the Partnership Committee was detailed somewhere or if that's just the way it had been. **Ms. Rooney** replied they had been following the current agreement and the way it says to operate. She acknowledged it was the same way as when the project was being developed, but the Oversight Committee and Management Committee were kept the same. That guided the development of the new agreement. The agreement states the Oversight Committee will meet at least quarterly and that's what's been done. **Councilor Goodhouse** asked if it outlines what must be done at the meeting. **Ms. Rooney** stated it did and there were a lot of good things in the IGA that were already being done and that they want to continue.

Mr. Balfour reviewed there was an Operations Plan, Emergency Response Plan, and Joint Water Management and Conservation Plan, all which include communication protocols that had worked well so far. **Mayor Buck** asked Councilor Goodhouse to clarify his comment regarding the IGA referencing the two cities would work together to develop a plan or if that had been the practice. **Councilor Goodhouse** replied the practice had been that the cities work together but wanted something in writing saying they would work together and make decisions together and outline the processes for that. **Ms. Bennett** noted the original agreement was focused on construction and the new agreement must make it clear the Management Committee has the responsibility to work together. **Councilor Goodhouse** reiterated things were operating fine now but wanted assurance that years from now if something were to change, there would be clear language and direction. **Ms. Bennett** agreed it should be spelled out that the Management Committee has the responsibility to coordinate the plans between the cities. **Mr. Balfour** clarified the cities would work together to develop plans and periodically review them. **Ms. Bennett** concurred and added to inform the Partnership Committee and offer them opportunity to provide policy guidance. **Mr. Rager** referenced the Operations Plan and noted there was an entire

appendix dedicated to the Communications plan. It lays out what's done during normal operation periods, what should be done during non-normal operations periods, and an entire section about what's to be done during emergency operating conditions. He opined that type of documentation addressed Councilor Goodhouse's concerns. **Councilor Goodhouse** maintained it should be clearly stated in the agreement so down the road when it's different people it would be clear how to operate. **Ms. Rooney** referenced Article 3 and stated the way it was currently written is the way it operates. She noted she didn't become involved until the plant was operational and she had referenced the current agreement for operational guidance as to how the OVC and management team were supposed to operate. She felt it could be made better by updating and removing some of the extraneous language but the end result would be similar to how things are run today. **Councilor Goodhouse** pointed out the current agreement states a new agreement will be in place 3 years after the completion of construction so it was long overdue. **Mr. Balfour** clarified discussions regarding the new agreement had started pre-Covid. **Councilor Goodhouse** agreed and said it had started back when Mayor Cook and Councilor Snider sat on the committee and felt it was time to finalize the new agreement before a whole new committee was in place.

Mr. Balfour readdressed the \$500k threshold and asked if the group felt that was right. **Councilor Goodhouse** asked what Mr. Rymer's threshold was in Tigard. **Mr. Rymer** responded his signing authority was \$250k. **Ms. Bennett** stated her threshold was also \$250k so she thought \$500k total made sense. **Councilor Newton** suggested in an emergency, expenditures over \$500k might be handled differently. **Ms. Rooney** recalled the ice storm. The fact that it was declared an emergency gave some latitude to get the generators, not knowing what it might cost. **Councilor Goodhouse** asked what the parameters were for declaring an emergency and if that emergency status would give decision making authority to Lake Oswego and gave an example of Lake Oswego declaring a curtailment emergency for a summer and not supplying Tigard with their share of water. **Ms. Bennett** clarified City Managers can only declare an emergency for 72 hours and reiterated the importance of the agreement pointing to the other plans that state what will happen in these different scenarios. **Mr. Balfour** pointed out even if Lake Oswego were to incur expenses in an emergency that Tigard would be partially responsible for, there's a provision in the agreement that says Tigard can pay under protest. The immediate problem is resolved, people have water, and the protest can move to the dispute resolution process. He said it would be impossible to include every possible scenario in an agreement so it would be important to clearly outline the dispute resolution process and assured that language would be looked at very carefully. **Councilor Manz** asked about the rationale behind the \$500k figure. **Ms. Bennett** responded it came from the previous draft created by Tigard. **Mr. Balfour** added it also exceeded each CM's respective authority. **Councilor Manz** stated she felt \$500k was an appropriate amount. **Ms. Rooney** reminded there were multiple protections on signing authority within each city.

Mr. Balfour opened discussion regarding curtailment. In the current agreement it states Lake Oswego and Tigard would address curtailment equally, not the 18/20 proportionally. He asked if in the new agreement they would like to have curtailment shared proportionally or if they would prefer to keep the language as equally. He asked how a curtailment situation was handled operationally in the past and if changing to proportionally would affect that. **Mr. Bienerth** responded there had been curtailment discussions among staff but never had an actual curtailment situation. He noted Tigard had the ability to produce some of their own water from wells where Lake Oswego did not. **Ms. Bennett** asked about curtailment during the chlorine shortage. **Ms. Rooney** stated there was voluntary curtailment and staff referred to the curtailment plan to determine when it might be appropriate to call a formal curtailment, but that didn't happen. **Mr. Rager** added both cities stopped watering parks and washing vehicles but

didn't compare how much each city was cutting back. Conceptually, the cities cut back equally by taking the same measures. **Ms. Rooney** pointed out during the chlorine supply shortage there was never a shortage of water. Had the chlorine supply run out there would have been a boil water notice and both cities were trying to avoid that. She noted that the situations that arise are never exactly addressed in the various plans but they act as a guide for decision making. Nothing ever happens the way the plans state so staff are constantly having to adapt them to the situation at hand. During the chlorine shortage the curtailment plan wasn't implemented but had it been, it wouldn't have been due to a lack of water. She opined it wouldn't be possible to address every scenario in an agreement. **Ms. Bennett** reminded the group that if there were a water shortage it would not be a surprise. It would be anticipated months in advance and opined there would likely be enough water for domestic consumption. **Councilor Goodhouse** stated he felt proportional vs. equally would be more appropriate. **Mr. Balfour** agreed because the rest of the agreement was based on proportional investment and included method for Tigard to recapture costs when providing water to Lake Oswego based on the source. He asked how it was handled when Tigard provided water to Lake Oswego in the ice storm. **Mr. Rager** said it was done during the annual true-up. **Councilor Goodhouse** asked if water rights were reduced, would the remaining rights be assigned proportionally or equally and if that were addressed in the agreement. **Mr. Balfour** recommended if that were to happen the cities may want to renegotiate the agreement. **Ms. Bennett** agreed and suggested outlining the parameters that may trigger a renegotiation but speculated a reduction in water rights was highly unlikely. **Mr. Balfour** stated his next step would be to draft a new agreement based on the proposed table of contents and that he would flag the proportion vs. equal language for further discussion. Having consistency regarding investment proportion throughout the agreement would be beneficial and noted because the proportion split was 18/20 it wouldn't be a huge difference vs. equally. He felt he had enough direction to create a draft for the committee's review. **Councilor Goodhouse** asked about timeline for completion of the draft and meeting to review and the process following that. **Mr. Balfour** replied the next scheduled time for this group to meet was shortly after Labor Day but thought by the end of July they could have a document ready to share with the committee members.

7. ADJOURN

There being no further business **Councilor Goodhouse** adjourned the meeting at 2:35 p.m.

Respectfully Submitted,

Susie Anderson
Administrative Assistant

Approved by the Oversight Committee:

October 10, 2022