



**Lake Oswego Tigard Water Partnership  
Summary of Oversight Committee Meeting  
October 10, 2022**

**City of Lake Oswego:**                   **Oversight Committee:** Mayor Buck, Councilor Manz  
Staff: Martha Bennett, City Manager (via WebEx); Erica Rooney, Public Works Director/City Engineer; Bret Bienenrath, Water Treatment Plant Manager; Susie Anderson, Administrative Assistant

**City of Tigard:**                           **Oversight Committee:** Councilor Goodhouse, Councilor Newton  
Staff: Steve Rymer, City Manager; Brian Rager, Public Works Director

**Guests:**                                   Clark Balfour, Cable Huston

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**1. CALL TO ORDER/ROLL CALL**

The meeting of the Lake Oswego Tigard Water Partnership Oversight Committee was called to order by **Chair Manz** at 5:34 p.m. The meeting was held in the Willow Room at the Lake Oswego Public Works Center, 17601 Pilkington Road, Lake Oswego.

**2. APPROVAL OF MINUTES**

**Mayor Buck** moved to approve the minutes of the June 20 and July 18, 2022 meetings. **Councilor Goodhouse** seconded the motion. The motion passed with 3 aye votes. **Councilor Newton** abstained.

**3. PUBLIC COMMENT**

None.

**4. MEETING POINTS**

4.1 Review and Discuss the Proposed Updated IGA

**Mr. Balfour** reviewed that the group met in June and provided direction to help develop a draft agreement. Since then, he and staff have worked to craft an operable agreement. It was sent out for review the end of September and there had been some back and forth comments from Tigard and Lake Oswego. He noted staff was working to sort out the exhibits and language pertaining to the exhibits would be cleaned up, as well as any typos throughout the document.

**Mr. Balfour** referenced page 2, the last "whereas", one of Tigard's suggestions was that the agreement provide for decision making. **Councilor Newton** said following earlier discussion that day, their

suggestion now would be to have the document clarify decision making vs. provide for because the agreement specified decision making levels for council, Management Committee, Managing Agency, etc. The group agreed with the suggested change.

**Mr. Balfour** directed the group to Section 3.3 which defined the Partnership Committee. Currently, meetings occur quarterly and noted there was discussion of changing that to a semi-annual schedule. In terms of staff reports, agenda items and such, he asked if a semi-annual schedule would work. **Mr. Bienerth** responded it would from his perspective. **Councilor Newton** suggested keeping meetings quarterly with the understanding that a meeting could be cancelled if there were nothing to meet on and asked what it would take to call a special meeting in between if on a semi-annual schedule. **Councilor Goodhouse** agreed. **Councilor Newton** supported staff cancelling meetings in the case of nothing to report. **Mayor Buck** voiced his support for quarterly meetings in the spirit of good communication among the Partnership Committee and felt the quarterly updates were informative and suggested if a meeting were cancelled, perhaps staff could still send out a brief report via email. The group agreed to stick with a quarterly meeting schedule.

**Mr. Balfour** continued in Section 3.3 that states “the Partnership Committee will strive to achieve majority consensus, if consensus is not reached, then prior to final action on the matter or referral to councils, the Partnership Committee and Management Committee will select a neutral party familiar with the subject at issue to facilitate discussions to reach consensus”. He stated provisions had not been built in to the agreement to include a process for taking votes. He noted the term subject matter expert and opined staff were subject matter experts and bringing in someone would be an extra step and could potentially slow the consensus process down. He thought he understood Tigard felt bringing in an outside expert would be more in line of a partnership. **Councilor Newton** emphasized it would be in the event of not reaching consensus. **Councilor Goodhouse** asked if language would be added to address voting procedure and consensus. **Mr. Balfour** responded it could be added and reminded the vote taken to achieve consensus would be to make a recommendation, not a final binding action. **Councilor Goodhouse** felt there should be language defining the voting procedure so it would be clear 20 years from now when different people sat on the committee. **Mayor Buck** asked who a neutral party familiar with our system might be. **Mr. Balfour** said an example might be if consideration were being given to changing the treatment process by increasing chlorine dosing. That would be a technical staff decision and the Partnership Committee would likely agree on that but if not, then an organic chemistry expert could be brought in. **Councilor Manz** pointed out that was done when addressing depreciation and technical aspects from a financial standpoint. Consultants were brought in to explain different options to address depreciation and equipment replacement. Balfour stated that was a good example of when to bring in an outside expert or neutral party to act as an assistant or a mediator. **Mayor Buck** thought any issue that would come before the Partnership Committee would have been discussed and agreed upon by the Management Committee. **Councilor Newton** stated that was why they proposed the language in the event a consensus could not be reached, assuming for the most part there would be consensus but if an issue were to arise that the Partnership Committee didn't agree on, what would they do? She referred back to the auditors comment that Tigard had invested a lot and needed to make sure Tigard would have an impact on decisions. She voiced her support for “in the event of” language because it was hard to think of possible examples but there may be a time it would be necessary. **Mayor Buck** thought that made sense and in that scenario a mediator would be appropriate vs. a water scientist and was supportive of having some sort of dispute resolution process. **Councilor Newton** said ideally, the process would be for the Partnership Committee to reach consensus and go back to their Councils with a unified recommendation and thought it was important for this group, as much as

possible, to reach consensus. **Councilor Manz** understood but voiced concern about it being so prescriptive and opined highly prescriptive legal documents didn't always work the way they were intended and thought having a little wiggle room might make it easier to reach consensus. **Mr. Balfour** referenced Section 14 of the agreement which addressed dispute resolution and included the standard process to move toward a decision. In Section 3, Tigard was trying to address if consensus couldn't be reached, a neutral party or subject matter expert would be brought in to facilitate the discussion but consensus doesn't have to be reached. If the Partnership Committee can't agree, then the matter would go before the councils with the report that they weren't able to reach consensus and then it would be up to the councils to decide and if it's a managing agency decision, the managing agency would decide based on their delegated authority. Tigard's intent was to have a step before heading to dispute resolution. **Councilor Goodhouse** stated instead of going straight to dispute resolution, if a consensus couldn't be reached, they were proposing to have the option to bring someone in to assist. **Mr. Balfour** noted if after reasonable efforts the Partnership Committee couldn't find consensus then the councils would be informed and each city council would then take action. **Mayor Buck** took issue with who the person might be that would be brought in, and whether they would be a technical advisor or a mediator. The current process includes meetings where staff and Management Committee provide information and perspectives, and if after all that there is still some disagreement that is so profound that consensus can't be reached, then it should go to dispute resolution. He didn't see much difference between what was being proposed in this section and the dispute resolution section. **Mr. Balfour** responded it was softer and meant to facilitate discussions. **Councilor Newton** voiced her support for the language and gave examples as to why. She recalled while she was on staff, after negotiating for the additional 4 MGD for Tigard, there were Lake Oswego council candidates running who were opposed to the Partnership, which was terrifying for Tigard. There was also the issue of not getting anywhere with the development of a new agreement when the existing agreement stated it would be complete in a specific amount of time. When Mayor Studebaker was in office, Tigard had heard he was in favor of a curtailment system where Lake Oswego would take all their water first and give Tigard whatever was left. She felt all options should be exhausted before going to dispute resolution because at that point it would be in the news and be very political. **Councilor Goodhouse** addressed Mayor Buck's concern about who would be brought in and thought the group collectively would decide that. It would be an in-between step before making it a legal issue. **Councilor Manz** was apologetic that because of politics Tigard felt uneasy at times and stated former Mayor Studebaker wanted things to stay as they were. She acknowledged the process of developing a new agreement had dragged on but that was partially due to COVID and voiced her appreciation to be moving in a positive direction toward a new agreement. She wanted to move forward and hoped the ideas of previous elected officials wouldn't be a sticking point. **Councilor Goodhouse** stated they wanted to ensure that there was a clear road map in the new agreement for future committee members and councils to follow. It was set up in a way to address the "what ifs" if the political climate were to change in the future. They wanted to plan for something that most likely wouldn't happen but, if necessary, they would have an intermediary before taking legal steps with dispute resolution. **Councilor Newton** suggested removing "subject matter expert". **Mayor Buck** posed if consensus couldn't be reached how would they agree on a neutral party. That's why he prefers how it's laid out in dispute resolution. **Mr. Balfour** suggested a mediator may not be necessary but someone with outside expertise to help educate and guide a discussion as FCS Group did previously. **Mayor Buck** asked if the decision to bring FCS Group in was because the team between the two cities didn't have the expertise to address the issue. **Ms. Rooney** responded they were brought in to assist with the true-up. **Councilor Manz** agreed and said they had presented different depreciation options. **Mayor Buck** felt that was different than if there were some kind of policy disagreement. He said he was in favor but felt it should be more specific in terms of who or what kind of neutral party and suggested

skilled facilitator. **Mr. Balfour** stated skilled facilitator would work if it were defined how the person would be selected. The group agreed on skilled facilitator. **Councilor Goodhouse** asked if voting procedure would be addressed in the agreement. **Mr. Balfour** replied if it were it would be as simple as "If a question is before the committee, the Chair will call the question". The group thought that would be ok.

**Mr. Balfour** directed attention to the language, "if final decision is vested with the Managing Agency, the Managing Agency shall proceed according to its ordinary and regular procedures" that Tigard wanted to strikeout. **Councilor Newton** said they had met earlier in the day and decided not to strike the language but wanted to add reference to the various plans noted in the agreement. **Mr. Rymer** suggested "ordinary and regular procedures and any guiding plans or documents". The group agreed.

**Mr. Balfour** referenced section 3.4.1 where Tigard had added "and accept" to the "Partnership Committee will have opportunity to review and comment on the following matters", and noted Lake Oswego took issue with the word accept. Lake Oswego would like to leave it "review and comment" or change to "review, comment, and advise" because decisions were made by the councils. **Councilor Newton** explained Tigard's suggestion was because the items referenced, budget, CIP, and non-emergency unforeseen capital replacement exceeding 500,000 obligated them financially. They were careful to not use the word approve recognizing they don't have that authority but they need a head-nod that they're in agreement. She thought it addressed the auditor's comment that Tigard committed a lot of money and Tigard's authority wasn't clear and "review and comment" didn't provide any closure but accept did. By accepting or agreeing Tigard would be making a commitment to fund matters brought to the Partnership Committee by the Management Committee. **Councilor Manz** stated the Partnership Committee had been reviewing, commenting, and advising all along. **Councilor Newton** felt differently about things that would financially obligate Tigard and those items should receive a head nod. **Councilor Goodhouse** stated that's where the auditors said Tigard should have more say in the decision-making process on financial matters as opposed to advising. **Councilor Newton** stated another word Mr. Rager had suggested was concur. **Mayor Buck** said this was not moving toward becoming a governing body. but rather a committee that advises the councils so a word like accept is synonymous so he was in favor of using advise. **Councilor Newton** pointed out that Tigard's boards and committees vote on things and make recommendations to council. **Councilor Goodhouse** stated they were trying to get as close to a governing body without being one and referenced past discussions of becoming an ORS 190. **Councilor Newton** acknowledged it's not a governing body but felt strongly that matters regarding financial obligation should receive more of a formal head-nod. **Mayor Buck** stated the committee was a sort of first layer and if there were to be any disagreement it would go on to the councils. This group doesn't vote on matters. **Councilor Newton** argued that accepting didn't mean a vote would be taken. **Mayor Buck** stated that was the issue Lake Oswego had with it because what if it weren't accepted? **Councilor Goodhouse** said the new agreement would fill some of the gaps in the old agreement and give the committee more of a decision-making process. He agreed with Councilor Newton that this committee wouldn't get in to the operations but there were areas where there needed to be more of a decision-making process and agreement or consensus on some matters. **Councilor Newton** felt financial matters shouldn't just be handed to the committee. **Mayor Buck** responded that was where they review, comment, and advise. He was hearing that there was a lack of consensus regarding a governing body between Councilors Newton and Goodhouse. Lake Oswego had been very clear that a governing body wouldn't be formed. He opined Councilor Goodhouse needed to get on the same page. It would not be a governing body that votes on matters. If they don't agree on the budget there would be no recourse for the committee, it would still go to the councils so he felt the agreement should be realistic

and the Partnership Committee was a level of review. **Councilor Manz** asked Mr. Balfour if there were another word that might be acceptable to everyone. **Mr. Balfour** replied there were other words but he felt accept worked because accept meant to receive. **Councilor Goodhouse** referred back to Section 3.3 which stated majority consensus with a vote so why not in Section 3.4. **Councilor Newton** replied Section 3.3 referred to the logistics of how decisions are made and 3.4 addresses financial matters specifically. **Mr. Balfour** reminded that all three of the financial items go before council. **Mayor Buck** asked Councilor Newton what she thought of the word receive. She preferred it to advise. She reiterated two years in a row their auditors had expressed concern about Tigard's investment with no decision-making authority. **Councilor Goodhouse** added the committee formed around the partnership didn't have decision making authority and that was what the auditors continue to bring up. **Mayor Buck** suggested the auditors didn't understand what the committee was. **Mr. Balfour** suggested using "review, comment, and receive". The group agreed receive would be used.

**Mr. Balfour** continued through the document noting Lake Oswego was agreeable to Tigard's lineout and strikeout suggestions including section 3.5 addressing budgeting process schedule. **Ms. Bennett** pointed out Lake Oswego was on a biennial budget so "each year" should be removed. **Mr. Balfour** continued to section 4.2 Allocation of Capacity where Tigard proposed removing "endeavor to", so it would simply be "develop".

**Mr. Balfour** moved on to Section 12 which referenced various plans including the Operations Plan, Water Management and Conservation Plan including curtailment, Water Rights, Emergency Response and Communications. He noted Tigard had proposed new language for Section 12.1 that was more condensed and concise. The proposed language was handed out to the group. **Councilor Newton** stated Tigard had discussion about language regarding amending plans, excluding the Operations Plan. A Partnership Committee representative could propose an amendment, the Management Committee would review and study and return a recommendation. She acknowledged concern about the advisory committee being involved in operations. The group agreed to the proposed language. **Mr. Balfour** stated it would be Section 12.1.

**Mr. Balfour** directed attention to Section 12.2, the use of the word "acceptance" regarding the Operations Plan. The group agreed to delete the word acceptance and leave it as review and comment.

**Councilor Manz** voiced her support for both councils to approve the agreement by the end of the year and noted that two or three of the committee representatives would no longer be serving after the first of the year. **Councilor Newton** stated Tigard Council was scheduled to discuss the agreement at their November 1st meeting and adoption was scheduled for November 22nd. **Ms. Rooney** stated the Management Committee would be meeting in the coming week to get the exhibits straightened out and then there would be one more final review. The group agreed it wouldn't be necessary for the Partnership Committee to meet again but receive the final version of the agreement via email when complete. **Ms. Rooney** stated the agreement would go before the Lake Oswego Council in December after Tigard Council had approved it.

**Ms. Rooney** addressed the committee and thanked them for their involvement and commitment over the years. She presented plaques to Councilors Goodhouse, Newton, and Manz.

There being no further business, **Chair Manz** adjourned the meeting at 7:05 pm.

Respectfully Submitted,

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Susie Anderson  
Administrative Assistant

Approved by the Oversight Committee:

February 27, 2023