

## **WATER SUPPLY AGREEMENT**

THIS AGREEMENT is between the JOINT WATER COMMISSION (JWC), an intergovernmental entity formed under ORS Chapter 190, and the CITY OF TIGARD (Tigard), an Oregon municipal corporation. JWC and Tigard are also referred to individually as “Party”, and collectively as “Parties”.

### **RECITALS**

The Parties agree upon the following Recitals:

- A. Tigard supplies municipal water in the Tigard Service Area which includes the Cities of Tigard, Durham, and King City and the Tigard Water District. “Municipal water supply” means water used for the municipal needs of the Tigard Service Area customers.
- B. Tigard currently obtains its water supply for the Tigard Service Area from its contract with the City of Portland, its Aquifer Storage and Recovery wells and through an intertie with the City of Lake Oswego. Tigard manages peak season demands through a combination of these sources and use of its storage facilities.
- C. Tigard has entered into the Lake Oswego Tigard Water Partnership intergovernmental agreement (LOT Project) whereby the Lake Oswego river intake, raw water transmission, treatment plant, finished water pumping, transmission and storage will be upgraded, expanded and replaced as necessary to deliver water to Tigard prior to July 1, 2016 to enable Tigard to end its supply contract with the City of Portland by the contract’s June 30, 2016 expiration date.
- D. Construction under the LOT Project is ongoing. The pump station serving Tigard with water supply from Lake Oswego was demolished as part of the LOT Project, and construction of the replacement pump station will not be completed until October 2015. As a result, water supply by Lake Oswego to Tigard through existing interties between

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them will not be possible for the peak season of July 1, 2015 through September 30, 2015 (hereafter “2015 Peak Season”).

- E. Tigard seeks access to additional water supplies for the 2015 Peak Season defined in Recital D above as a supplement to its other water supplies. Tigard may determine the need to contract for supplemental water supply from JWC in future years. Whether excess capacity is available from JWC in future years depends upon a variety of factors, including but not limited to JWC Member demands, existing JWC wholesale supply contracts, capacity limitations of the JWC water treatment plant, storage and transmission, stored raw water supplies and impacts from programmed JWC system upgrade and expansion capital improvements.
- F. JWC has excess water treatment plant and water supply capacity for the 2015 Peak Season sufficient to meet the limited Tigard request for supplemental water. The City of Beaverton (Beaverton), a JWC member, water distribution system has an intertie with Tigard’s water distribution system which has previously been used to wheel JWC water to Tigard and which will provide for the supply of water from the JWC to Tigard. The JWC Agreement provides that sale of water to Non-Member entities shall be made by the JWC, and not by individual members of the JWC.
- G. The Parties hereto desire to enter into this agreement whereby JWC will provide supplemental water to Tigard for the 2015 Peak Season as defined.
- H. Each Party has the authority to enter into this Agreement under ORS Chapter 190 and execution of this Agreement has been authorized by the governing bodies of each and being fully advised,

### **NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS**

Section 1. Recitals. The Recitals above are hereby incorporated by reference as though fully set forth.

Section 2. Obligations of the Parties. JWC agrees to sell, and Tigard agrees to purchase, a limited quantity of water to supplement Tigard’s other water supply

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sources for the 2015 Peak Season of July 1, 2015 through September 30, 2015, subject to the following:

2.1. JWC will deliver the water purchased by Tigard to the Beaverton distribution system for Beaverton delivery to Tigard at the Beaverton/Tigard intertie located near the intersection of SW Scholls Ferry Road and SW Barrows Road.

2.2. The volume and rate of supply to Tigard may vary on a daily basis at Tigard's discretion subject to:

2.2.1. The maximum daily demand shall not exceed two million gallons per calendar day (2 MGD).

2.2.2. A minimum flow of 174 gallons per minute (334 ccf per day) will be supplied to Tigard to maintain continuous compliance at the intertie meter with regulatory requirements for drinking water quality.

2.2.3. The Parties shall develop operational protocols with Beaverton that will be an exhibit to this Agreement. The exhibit may be amended from time to time as approved by the JWC General Manager and designated representatives of Tigard and Beaverton. In addition to other topics that Tigard, Beaverton and JWC determine to be included, the operational protocols will set the maximum and minimum flow rates through the JWC and Beaverton systems to meet the Tigard demand and to maintain water quality in the Beaverton/Tigard intertie, and will establish protocols for coordination of operations between the Beaverton and Tigard water systems.

2.3 The volume of water delivered by JWC to Tigard shall be measured at a Beaverton owned meter at the Beaverton/Tigard intertie. JWC will make arrangements with Beaverton to test and calibrate the meter, at Beaverton's cost, prior to commencement of the 2015 Peak Season and in subsequent years if this Agreement is extended. If Tigard wishes to install Supervisory Control and Data Acquisition (SCADA) instruments to allow Tigard to monitor and verify flows through the Beaverton meter, then the terms and conditions of installation and use shall be separately negotiated between Beaverton and Tigard.

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Section 4. Wholesale Rate. Tigard agrees to pay JWC for 2015 Peak Season water at the rate of \$1.59 per hundred cubic feet (ccf), measured at the Beaverton/Tigard intertie meter, payable according to Section 8 below. The rate includes \$0.29 per ccf Beaverton wheeling charge.

Section 5. Term. The term of this Agreement shall begin upon execution by both Parties and terminate without further action of the Parties on September 30, 2015. The Parties may mutually agree to sell and purchase water in subsequent years, and may also mutually agree on terms for emergency water supply, but the terms and circumstances for those arrangements are difficult to predict and the Parties recognize that any contractual relationship for subsequent years will require execution of a new agreement.

Section 6. Limitation of Liability. Notwithstanding any other provision of this Agreement, the parties agree that JWC will not be liable for breach of this Agreement or damages if JWC is unable to provide water to Tigard due to inadequate water supply availability despite availability projections made by JWC in the reasonable exercise of its professional judgment. Additionally, JWC will not be liable for breach or damages if JWC is unable to provide water to Tigard by reason of interruptions in JWC's water system due to breakdowns, emergency shut-off, or due to any reason other than interruptions caused by the intentional misconduct or gross negligence of JWC, its agents and employees.

Section 7. Emergency Curtailment. Tigard agrees that water deliveries by JWC are subject to the same water use regulations, water conservation practices and curtailment measures as are imposed upon JWC customers under the JWC Water Management and Conservation Plan. In the event of an Extreme Water Supply Disruption in the JWC system, JWC will notify Tigard of this condition and Tigard agrees that JWC will not be obligated to provide water to Tigard. JWC will notify Tigard as soon as practicable when such curtailment measures are necessary and when those measures can be rescinded.

Section 8. Payment of Charges. Tigard will be billed by JWC monthly for the water provided under this Agreement. The bill will show the billing period, volume of water used, total costs and any surcharges. Tigard agrees to pay the charges to JWC within 30 days after the billing is received. If payment is not made

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within this 30 day period, JWC will provide Tigard with written notice of non-payment and may begin charging interest at the Local Government Investment Pool Rate in effect at that time. In addition, JWC may shut off the water supply to Tigard if, after 10 days from written notice of non-payment, the charges remain unpaid. If Tigard files a written notice of dispute with JWC over the amount of the charges, within 10 days after a written notice of non-payment is given to Tigard, JWC will not cut off or interrupt water service to Tigard, or charge interest for non-payment of disputed amount while such dispute is under consideration, mediation or litigation under Section 9 of this Agreement. If, after consideration, mediation, or litigation, some amount is determined to be owed by Tigard, then JWC may charge interest on that amount retroactively to thirty 30 days after it was originally due.

Section 9. Dispute Resolution and Remedies. Unless there is an extension of time by mutual consent in writing, the failure or unreasonable delay by either party to substantially perform any term or provision of this Agreement constitutes a default. In the event of an alleged default of this Agreement (other than non-payment of charges under Section 8), the party alleging such default will give the other party not less than 30 days' notice in writing specifying the nature of the alleged default and the manner in which the default may be cured satisfactorily. During this 30 day period, the party charged will not be in default for purposes of termination or instituting legal proceedings. Thereafter, the non-defaulting Party may pursue all remedies in the Circuit Court of the State of Oregon in Washington County.

Section 10. Limitation of Liability and Indemnity. Tigard will indemnify and hold harmless JWC, its elected and appointed officials, employees, agents and volunteers from any losses or damages (including but not limited to consequential damages) arising out of or resulting from JWC's inability to provide water to Tigard, or resulting from any connection made by Tigard which is beyond the supply then available, or which creates less than adequate pressures. Tigard will indemnify and hold harmless the JWC and the Parties to the JWC Water Service Agreement, their elected and appointed officials, employees, agents and volunteers from any losses or damages (including but not limited to consequential damages) arising out of or resulting from any complaint or demand for service to any connection permitted by Tigard, for which the then-available water supply or pressure was inadequate.

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Section 11. No Third Party Beneficiaries. JWC and Tigard are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives any benefit or right, whether directly or indirectly, to third persons, including Tigard's retail customers.

Section 12. Notices. Written notices and correspondence under this Agreement may be sent by postage prepaid first-class mail addressed as below set forth, and if so sent, are deemed received three days after deposited in the United States Mail. Written notices and correspondence transmitted in any other manner are deemed given when actually delivered to the other party. Either party to this Agreement may change its address by notice to the other party in the manner provided above.

Notice to Tigard will be addressed as follows:

Tigard City Manager  
City of Tigard  
13125 SW Hall Blvd  
Tigard, OR 97233

Notice to JWC will be addressed as follows:

JWC General Manager  
c/o City of Hillsboro  
Water Department  
150 E. Main Street  
Hillsboro, OR 97123

Section 13. Force Majeure. Performance by either party will not be in default where delay is due to insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, contamination of water supply, governmental restrictions imposed or mandated by governmental entities other than JWC, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within reasonable control of a party.

Section 14. Applicable Law and Attorney Fees. The laws of the State of Oregon apply to this Agreement should either party bring any legal action under this Agreement or to enforce any provision. The prevailing party is entitled to

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reasonable attorney fees and court costs as fixed by the court. Attorney fees include attorney fees on any appeal and in any bankruptcy proceeding.

Section 15. Recordkeeping. The parties will maintain all fiscal records relating to this Agreement, in accordance with generally accepted accounting principles consistently applied. In addition, the parties will maintain any other records pertinent to this Agreement to clearly document the party's performance. All such fiscal records, books, documents, papers, plans, and writings will be retained by the parties and kept accessible for a minimum of four years, except as required longer by law, following final payment and termination of this Agreement, or until the conclusion of any audit or litigation related to this Agreement.

Section 16. Severability. The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

Section 17. Assignment. This Agreement may not be assigned by either party, without the prior written approval of the other party.

Section 18. Other Necessary Acts. Each party will execute and deliver to the other all documents reasonably necessary to carry out this Agreement.

Section 19. Nonwaiver. Failure by either party, at any time, to require performance by the other party of any provision does not affect the first party's rights to enforce the same provision. A waiver by either party of default will not be a waiver of any succeeding default.

Section 20. Compliance with Laws. Tigard and JWC will comply with all local, regional, state and federal agency regulations pertaining to water systems of its size and kind, including, but not limited to, requisite sampling to assure compliance with any applicable Federal Requirements for testing and water quality.

Section 22. Access to Records. Each Party agrees that the other Party and its authorized representatives will have access at reasonable times to all books,

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documents, papers and records which are directly related to the Agreement, for the purpose of making any audit, examination, copies, excerpts and transcripts.

IT IS SO AGREED AND EFFECTIVE THIS \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 2015.

City of Tigard  
an Oregon Municipal Corporation

Joint Water Commission  
an ORS Chapter 190 Entity

By: \_\_\_\_\_  
Martha A. Wine  
City Manager

By: \_\_\_\_\_  
Kevin Hanway  
General Manager

Attest: \_\_\_\_\_  
City Recorder

Approved as to Form:  
By: \_\_\_\_\_  
JWC Counsel

Approved as to Form:  
By: \_\_\_\_\_  
City Attorney