

LAKE OSWEGO-TIGARD WATER SUPPLY FACILITIES
AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT
REGARDING WATER SUPPLY FACILITIES

DATED _____, 2022

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**LAKE OSWEGO-TIGARD WATER SUPPLY FACILITIES AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT REGARDING WATER SUPPLY FACILITIES**

This Amended and Restated Intergovernmental Agreement Regarding Water Supply Facilities is effective on _____, 2022 (the "Amended and Restated 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, including the City of King City, and delivery of water by agreement to the City of Durham and the Tigard Water District in the unincorporated area;

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 by wholesale supply contract 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, pursuant to the Intergovernmental Agreement Regarding Water Supply Facilities, Design, Construction and Operation between Lake Oswego and Tigard dated August 6, 2008 (Original IGA), the Parties designed and constructed a new water intake and water treatment facilities, raw and finished water transmission, pumping and storage facilities (hereinafter "Supply Facilities") on land jointly held as tenants in

common, to make beneficial use of Lake Oswego's water rights;

WHEREAS, the Original IGA was amended at various times as project milestones were achieved, construction completed, and final costs were reconciled and allocated for the Supply Facilities, now fully functional and operating since 2016; and

WHEREAS, the Parties agree that, under the Original IGA, the Parties have or will reap significant benefits by jointly taking action to extend and perfect existing water rights, along with the construction and improvement of new Supply Facilities infrastructure necessary to supply that water to the Parties into the future; and

WHEREAS, the Parties agree that they have worked in a collaborative, open, and participative manner under the Original IGA that best serves the needs of the Parties; and

WHEREAS, the Original Agreement was primarily focused on completion and delivery of the Supply Facilities and Parties believe that is necessary to enter into this Amended and Restated Agreement for ongoing operations, maintenance, repair and replacement of the Supply Facilities for the mutual benefit of the Parties as owners thereof, to protect and steward their significant investment, continually seek and maintain stability and local control over the source of supply, provide for flexibility in the use and allocation of water, provide for flexibility for management of water resources for enhanced costs and operational efficiency, create opportunities to share and trade staff resources, expertise, and technological capabilities, and clarify decision-making.

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 or Amended Agreement means* this Lake Oswego-Tigard Water Supply Amended and Restated Intergovernmental 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 *Clackamas River Intake Pump Station (RIPS)* - a constructed structure comprised of a reinforced concrete building and all equipment and materials contained therein 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 may be updated and revised by resolution of the Parties.

1.1.5 *Curtailment Plan* - The written plan developed for curtailment of

water service in accordance with OAR Chapter 690 Division 86 rules.

1.1.6 *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 Contract Customers and ultimate service area measured in cubic feet per second (cfs), gallons, gallons per day (gpd), gallons per minute (gpm), million gallons per day (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.

1.1.7 *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^e = Engineering News Record Construction Cost Index
for the year of evaluation.

ENR^o = Engineering News Record Construction Cost Index
for the year placed in service.

Y^e = Year of evaluation.

Y^o = Year placed in service.

BDL = Book Depreciation Life.

1.1.8 *Existing Wholesale Contract Customers* - the Lake Grove Water District, River Grove Water District, Skylands Water Company, Glenmorrie Cooperative Association, and Alto Park Water District who are served by Lake Oswego as if they were Retail Customers of Lake Oswego under the terms and conditions of this Agreement. The City of King City transferred its water system to Tigard and is a retail customer of Tigard. The City of 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.

1.1.9 *Fiscal Year* - the one-year time period commencing on July 1 and ending on June 30

1.1.10 *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.

1.1.11 *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 will 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).

1.1.12 *Operation, Maintenance, Repair and Replacement*- those activities to operate, maintain, repair and replace the Supply Facilities as necessary to provide potable water to the Parties in accordance with all laws and regulations and prudent water utility practices.

1.1.13 *Planning Forecast* - the document submitted by the Parties in accordance with Section 8, which shows the Demand of each Party to be imposed on the Supply Facilities and the Capacity owned or leased by each Party in such facilities.

1.1.14 *Property* - those parcels of real property owned in fee simple, by easement or other interest over, under, or upon which the Supply Facilities are located as set forth on Exhibit 1. Currently owned Property or additional properties acquired after the date of this Agreement shall be acquired as tenants in common in proportion to the Parties' allocation of capacity.

1.1.15 *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 or consolidation, or by intergovernmental agreement among the Parties pursuant to ORS Chapter 190. A municipal corporation or other entity, which purchases water for resale, is not considered a Retail Customer.

1.1.16 *Service Area* - the service area for each Party as set forth on Exhibit 2 and as may be amended by annexation and land use processes of each Party. Each Party will update its service area map as necessary which will be incorporated into this agreement without necessity of action by the city councils.

1.1.17 *Summer Period* - June 1 through October 31.

1.1.18 *Supply Facilities* - the facilities utilized by the Parties identified on Exhibit 1, consisting of the River Intake Pump Station, 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 is not a legal description of the Supply Facilities

1.1.19 *Surface Water Rights* - those water rights held by Lake Oswego registered with the State of Oregon Water Resources Department, which allow for diversion of Clackamas River 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.

1.1.20 *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 Reservoirs. The Transmission Facilities, ownership and their agreed value are more fully described in Exhibit 1, which exhibit may be updated and revised by resolution of the Parties.

1.1.21 *Water Treatment Plant Facilities* - the pumping stations and treatment plant which treats raw water and produces potable water for conveyance by the Transmission and Storage Facilities. The Water Treatment Plant facilities, ownership, and their agreed value are more fully described in Exhibit 1, which exhibit may be updated and revised by resolution of the Parties.

1.1.22 *Water Storage Facilities* - the Waluga Reservoirs #1 and #2 which receive potable water from the Water Treatment Plant Facilities as conveyed through the Finished Water Transmission Facilities. The Water Storage Facilities, ownership, and their agreed value are more fully described in Exhibit 1, which exhibit may be updated and revised by resolution of the Parties.

1.1.23 *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 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; (c) 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; (d) "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; (e) 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"; (f) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; (g) 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 (h) "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.

ARTICLE III MANAGEMENT

3.1 Managing Agency

Lake Oswego will be the Managing Agency with all necessary powers to manage the operation, maintenance, repair and replacement of the Supply Facilities, Property and Water Rights. As necessary, Lake Oswego will be the contracting agency with consultants, contractors and vendors. Lake Oswego will have the power to: a) approve contracts and change orders subject to this Agreement; b) undertake capital improvement, repair and replacement as authorized in the budget and capital improvement plan; c) take such actions reasonably necessary during an emergency with notice to

each City as reasonable under the circumstances and an estimate of financial impacts as soon as practicable; d) take action as necessary for non-emergency unforeseen capital replacement as provided in this Agreement; and f) other such powers as may be granted by the Parties from time to time. Lake Oswego is responsible for conducting the day-to-day business affairs including: procurement of supplies and materials, payment of invoices, accounting, budgeting, operation and maintenance of the Supply Facilities, planning, project management, maintaining records, and other such duties as required through Lake Oswego staff. Tigard shall pay its share of costs in accord with the terms and conditions of this Agreement.

3.2 Management Committee

Each Party shall appoint staff representatives to meet at intervals deemed appropriate to provide the Managing Agency or Partnership Committee information, review, comment and advice regarding provision of water supply and all aspects of the Supply Facilities and other activities under this Agreement. The Management Committee will endeavor in good faith to make recommendations to the Managing Agency or Partnership Committee as the Management Committee deems appropriate or where required by this Agreement.

3.3 Partnership Committee

Lake Oswego and Tigard shall each appoint two councilors to the Partnership Committee. The members shall serve at the pleasure of the appointing council.

The Committee shall meet as deemed necessary by the Managing Agency,

Management Committee, or Partnership Committee, but in no event less often than quarterly. The Managing Agency shall provide meeting and staff support for the Partnership Committee with the aid and assistance of the Management Committee. The Partnership Committee will consider information provided by the Managing Agency or Management Committee and endeavor in good faith to provide insight, guidance, or recommendations to the Managing Agency or to the City Councils as the Partnership Committee deems appropriate or where required by this Agreement. The Partnership Committee will strive to achieve majority consensus on issues. In the event consensus is not reached, then prior to final action on the matter or referral to the Councils, the Partnership Committee and Management Committee will select a skilled facilitator to assist the Partnership Committee discussions to reach consensus. If, after reasonable efforts, and call for a vote by the chair, the Partnership Committee cannot find consensus by majority on a matter to be decided by the city councils, then the city councils shall be so informed. Each city council will then consider and vote on the matter if it is one requiring council approval. If the final decision is vested with the Managing Agency, the Managing Agency will proceed according to its ordinary and regular procedures and any plans adopted under Article 12. Nothing herein shall be deemed a waiver of a Party's right to submit these matters to Dispute Resolution under Article XIV.

3.4 Partnership Committee Review

3.4.1 The Partnership Committee will have opportunity to review, comment, and receive the following matters prior to city council or Managing

Agency action:

3.4.1.1 Proposed budget or proposed supplemental budget for the Managing Agency.

3.4.1.2 Capital Improvement Plan adoption or amendment.

3.4.1.3 Non-emergency unforeseen capital replacement exceeding \$500,000.

3.4.2. The Managing Agency and Management Committee will present the following topics to the Partnership Committee in such detail to enable the Partnership Committee members to advise their respective councils: Operations Plan, Emergency Response Plan, Joint Water Management and Conservation Plan (including Curtailment), communications protocols and strategies, master planning/system planning, status of real property and supply facilities, risk management, capital repair and replacement projects, water rights, water quality and water supplies in the Clackamas River watershed, and potential water sales to non-parties. The Managing Agency will also provide periodic updates on federal, state, and regional drinking water issues and activities.

3.5 Budgeting and Accounting

The Managing Agency will prepare a proposed budget specific to the capital and operating needs of the Supply Facilities for each Fiscal Year. The proposed budget will 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. By mutual agreement, the

Management Committee will set the budget process schedule for each year. Each Party's proportionate share of the expenses of operation, maintenance, repair, and replacement of the Supply Facilities, including contingency or necessary funding reserves for repair and replacements, construction, and other expenses as may be incurred, will be estimated, and set forth in each Party's annual budget. The amount estimated will be recommended to be included as operating expenses or capital improvements in each Party's individual adopted budget. If the budget includes accumulation of funds designated for a particular purpose or future use, such amounts will be accumulated in a restricted or earmarked fund. The Managing Agency will 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.

3.6 Asset Management Program

Effective asset management responds to the Parties' goal of long-term fiscal health and sustainable service levels for the Supply Facilities. To assist in the maintenance of the Supply Facilities' performance at a reasonable cost and an acceptable level of risk, the Managing Agency and Management Committee will create and maintain a mutually acceptable inventory all of the capitalizable assets associated with the Supply Facilities, including physical facilities and real estate holdings. The inventory will include a schedule for repairs and replacement and be part of the Operations Plan. The Managing Agency and Management Committee may propose policies to the

Partnership Committee that improve, guide, schedule and fund the repair and replacement of the assets and suggest amendments to the Supply Facilities Capital Improvement Program or funding reserves. The program and policies shall be based on prudent utility practices and industry standards. As deemed necessary by the Managing Agency or upon request by Tigard, the inventory will be reviewed by the Managing Agency and Management Committee for modifications.

3.7 Council Decisions

Approval by the city councils of each Party is required for the following topic:

- 3.7.1 Any sale, transfer, lease, exchange, or other disposition of any Property over, under, or upon Supply Facilities are located;
- 3.7.2 Entry to any mortgage, pledge, encumbrance, or refinance of the Property or Supply Facilities;
- 3.7.3 Budget and appropriation of funds to meet the requirements of this Agreement, including a Capital Improvement Program;
- 3.7.4 Approval of any non-emergency capital improvement project not listed on a Capital Improvement Program exceeding \$500,000. If a capital improvement project has been budgeted and is part of the Capital Improvement Program, the Managing Agency shall be authorized to contract for all work necessarily related to deliver a complete and functioning project;
- 3.7.5 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;

3.7.6 Approval of any decision to change the use or the operation of the Property or Supply Facilities beyond adopted operational protocols;

3.7.7 Approval of amendment of the Agreement to allow a new Party to join;

3.7.8 Approval of modification, alteration, or dissolution of this Agreement:

3.7.9 Approval of a Capital Improvement Program and amendments.

3.8 Use of Employees

To the extent that any Party uses its own employees in the performance of its duties under this Agreement, that entity will 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 will be the sole responsibility of the employer Party.

3.9 Audit, Record Keeping; Access to Records

The Managing Agency will 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 will 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 non-supply facility assets.

The Managing Agency will maintain all fiscal records relating to the Supply Facilities in accordance with generally accepted accounting principles. In addition, the Managing Agency will maintain any other records pertinent to

the Supply Facilities in such a manner as to clearly document the Managing Agency's performance hereunder. All such fiscal records, books, documents, papers, plans, and writings will 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 will have access to all books, documents, papers and records of the Managing Agency which are directly related to the Supply Facilities for the purpose of making any audit, examination, copies, excerpts and transcripts.

ARTICLE IV

SYSTEM OWNERSHIP; ALLOCATION OF CAPACITY

4.1 System Ownership

The Parties each own an undivided interest in the Property and Supply Facilities as set forth in the Exhibits 6 and 7 attached hereto.

4.2 Allocation of Capacity

Tigard's allocation of Capacity shall be 18 million gallons of water per day, and Lake Oswego's allocation of Capacity shall be 20 million gallons per day. The Managing Agency will develop a strategy to perfect water rights over time with the Oregon Water Resources Department.

ARTICLE V

PROPERTY; CREATION OF TENANCY IN COMMON

5.1 Common Ownership

Lake Oswego, by warranty deed or assignment of easements, conveyed to

Tigard an undivided proportionate interest as tenant in common in the Property as set forth on Exhibit 6, attached hereto and incorporated by reference. Property for Supply Facilities acquired after the date of this Agreement will be acquired proportional to the Parties' respective allocations of Capacity, according to the purchase price paid. Closing costs will be shared equally.

5.2 Ownership Interest/Use

Lake Oswego's water rights were not transferred under any of the real property transfers. Title to the Property will be held in the name of each of the Parties in their respective undivided interest as tenant in common. 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.

5.3 Covenant

The Parties declare that the Property is and will be held, conveyed, pledged, 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 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

So long as this Agreement is in effect, no Party will 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 OPERATION AND MAINTENANCE OF SUPPLY FACILITIES

6.1 Management

Consistent with the terms of this Agreement and the Operations Plan, Lake Oswego will have responsibility as Managing Agency to manage, operate, maintain, 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.

6.1.1 *Operation and Maintenance Costs.* The costs of operation and maintenance will 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, according to the provisions of Exhibit 8, attached hereto. The method for calculating the rate and water use determination of payment will be set by the Managing Agency based on the budget and anticipated water use considering the previous 12 months'

water use.

6.1.2 *Renewal, Repair and Replacement Costs.* The Parties will budget and appropriate funds as needed for renewal, repair, and replacement costs as provided in Exhibit 7 according to the adopted Capital Improvement Plan (CIP) and mutually agreed schedule for CIP projects. Unless otherwise agreed, the Parties will make payments as required for renewals, repair, and replacement proportional to that Party's ownership interest in the Supply Facility component at the time the expenditure is incurred and following receipt of an invoice.

6.1.3 *Billing and Payment.* Each Party will 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 6.1.2, or the Managing Agency may send a separate invoice for the specific project. Payment is due to the Managing Agency within 30 days of receipt of the invoice. On March 1st 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 30th 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.

ARTICLE VII

PROPERTY MANAGEMENT

7.1 Property Management.

Consistent with the terms of this Agreement, the Parties agree that the Property over, under, or upon which the Supply Facilities are constructed will be operated and managed for water supply purposes as follows:

7.1.1 *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.

7.1.2 *Operation, Maintenance, Repair, and Replacement.* To contract for maintenance, security, repair, and aesthetics 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.

7.1.2.1 *Insurance.* To obtain or renew such policies of property insurance to insure 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 Managing Agency shall also obtain or renew a policy or

policies of general liability, automobile and property damage insurance with a single limit of not less than \$3,000,000. The Managing Agency may also obtain or renew such umbrella or excess primary insurance policies so long as the minimum amounts are maintained. The policies shall provide for not less than 30 days' prior written notice of cancellation. Each Party shall provide workers compensation insurance for its employees. The Managing Agency will receive, hold, and apply any proceeds or reimbursement for claims for the benefit of the Parties.

7.1.2.2 *Payment of Expenses.* To pay when due the expenses of the Property and all other expenses or payments duly authorized by the Parties.

7.1.2.3 *Records.* To maintain complete and accurate records of all receipts and expenditures for the Parties.

7.1.2.4 *Payment of Costs.* Each Party shall be responsible for its proportionate share of costs as set forth in Exhibit 8 related to the Property. Amounts owed by each Party for expenses related to the Property shall be invoiced as provided in Section 6.1.3.

ARTICLE VIII SUPPLY FACILITIES

8.1 Use of Supply Facilities

The Parties will 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 Demand. Prudent practices shall include a mutual commitment to conservation and use of water without waste implemented in the joint Water Management and Conservation Plan (WMCP). The Parties anticipate that instances of overuse of Capacity by a Party will be rare and the Parties will resolve such instances on a case-by-case basis. If a new member is added or if another municipal entity is supplied by the Supply Facilities so that additional demands on capacity are placed thereon, then, unless caused by system operation conditions not caused by the overusing Party, any use of 10% or greater by a Party of its allocated share of Capacity for two consecutive years or three out of five years shall be deemed overuse. The overusing Party will 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 additional improvements, change operating protocols, 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, periodically, but not less often than every five years, each Party will submit to the Managing Agency a 10-year planning forecast. The planning forecast will 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 includes any sale of water to third parties from capacity agreed to or reasonably anticipated within the ten-year time frame. The Parties will 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 will 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 allocated under this Agreement. Development and beneficial use by the Parties of water authorized in the Surface Water Rights of Lake Oswego will also 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, each Party will 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 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 city 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 IX.

8.6 Finished Water Storage

Finished water storage reservoirs (Waluga #1 and Waluga #2) are used by the Parties as shared water storage under the Supply Facilities. Waluga #1 is a 4-million-gallon facility with the capacity allocated to Lake Oswego. Waluga # 2 is a 3.5-million-gallon facility with 1.8 million gallons of

capacity allocated to Tigard and 1.7 million gallons allocated to Lake Oswego. The Parties agree to operate and maintain these storage facilities in an efficient and economic manner for both Parties. Notwithstanding this provision, each Party will 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 Plan as required under Article 12 and prudent utility practices. 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 will compensate the other Party as mutually agreed.

ARTICLE IX ADDITIONAL FACILITIES

9.1 Supply Facility 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. Expansion of 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 X to reasonably and prudently defer

capital improvements and costs thereof.

9.2 New Surface Water Rights and Expansion For Supply Facilities

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 Clackamas River sources to be used in the Supply Facilities shall first 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 agree that any expansion of the Supply Facilities shall be mutually agreed and set forth in a separate project agreement. The Parties shall use reasonable and prudent utility standards in determining 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, 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. If they mutually agree, the Parties will place the proposed project on the CIP. 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 Non-Capacity Capital Improvements

There may arise other improvements which do not directly in and of themselves provide for capacity increasing expansion of the Supply Facilities. In such circumstances, the Parties will execute a separate project agreement and 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 or other adverse impact.

**ARTICLE X
LEASING**

10.1 Leasing

As provided for in Article 8, the Parties will 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 18 mgd and 20 mgd allocations of the total 38 mgd Capacity of the Supply Facilities. This section is not intended to limit the Parties from mutually agreeing to leasing supply capacity to each other that varies from the terms of this Agreement.

10.3 Right to Lease

Lake Oswego has the right to lease to Tigard and Tigard to lease from Lake Oswego such unused capacity of its 20 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 has the right to lease to Lake Oswego and Lake Oswego to lease from Tigard the unused capacity portion of its 18 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 the Parties may otherwise agree.

10.4 Term

The term of any lease for Supply Facilities will 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 is to be a short-term measure that allows the Parties to defer expansion or new construction of other water supply options not associated with the Supply Facility 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 will 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 will be fixed for lease terms of five (5) years or less. For lease terms of greater than five (5) years, the lease payment will be recalculated every five (5) years in accordance with this Section 10.5.

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 Curtailment of Leasing Capacity

The Parties agree that a condition of any lease will be that the lessee Party will 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 will be based on conditions of approval on the Lake Oswego water rights and any reduction or limitation will be shared equally among the Parties.

ARTICLE XI SALES TO OTHERS

11.1 Water Sales to Others

In addition to the Existing Wholesale Customers, Retail Customers of any Party, existing mutual aid agreements, or extension of service to areas identified in

Exhibit 2, either Party may contract for the sale of water within that Party's allocation of Capacity to any other entity or person provided the contract is on a surplus basis. Any contracts of sale of water that are not on a surplus basis shall require approval of the other Party and compliance with the terms of this Agreement. Any contract shall be administered by the selling Party and all proceeds of water sales will be directly invoiced to the buyer and collected by the selling Party.

The Parties have jointly entered into an agreement with the City of West Linn and South Fork Water Board for emergency and mutual aid purposes, as set forth on Exhibit 9, attached hereto and incorporated by reference. This agreement will be managed by the Managing Agency. Any water provided under that agreement shall be allocated proportionately to and deducted from each Party. Any revenues derived from the joint sale of water under Exhibit 9 will 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 will be those proceeds remaining after expenses, renewals, and replacements and contingencies are paid.

ARTICLE XII

OPERATIONS AND OTHER PLANS, PROTOCOLS AND STRATEGIES

12.1 Planning Responsibilities

The Managing Agency, with the aid and assistance of the Management Committee, will develop various plans, protocols, or strategies as specified

in this Agreement or as deemed necessary to meet prudent utility practices. Any plan or plans may separately address the following topics or be included with other topics: operations, capital improvements, water management and conservation (including Curtailment), water rights, emergency response, and communications and may be revised or amended at any time. The Partnership Committee will have the opportunity to review and comment on any proposed plan, protocol, strategy, or amendment thereof. Excluding the Operations Plan, if a Partnership Committee representative proposes an amendment, then the Partnership Committee will determine, by majority consensus, to forward the amendment to the Management Committee for study. The Management Committee will provide its recommendation to the Partnership Committee.

12.2 Operations Plan

The Parties have adopted an Operations Plan for the Supply Facilities. The Operations Plan includes agreed comprehensive protocols and methodology to provide for water quality, treatment standards and protocols, asset management and for the equitable, effective and efficient operation of the Supply Facilities in accordance with generally accepted utility practices regarding the operation, management, capital repair, replacement, and improvements, and all aspects of the Supply Facilities. The Operations Plan may be updated as recommended by the Managing Agency and Management Committee, with review and comment by the Partnership Committee.

12.3 Joint Water Management and Conservation Plan (including Curtailment)

The Parties have adopted a joint Water Management and Conservation Plan (WMCP) for the Supply Facilities in compliance with the laws of the State of Oregon and will maintain compliance therewith through periodic updates as required. If a Party adopts a separate WMCP for its distribution system, that separate plan must be consistent with the joint WMCP. Any proposed separate WMCP will be reviewed by the Management Committee in advance of council adoption.

The Curtailment Plan element of the joint WMCP will provide that if an emergency or water shortage requires curtailment, the reduction in available water shall be shared proportionately according to allocation of capacity.

12.4 Capital Improvement Plan

The Parties will develop and maintain a Capital Improvement Plan (CIP) for the Supply Facilities which will be reviewed and, if necessary, revised periodically during the budget process. The CIP may be amended at any time following review by the Partnership Committee and approval by the city councils.

12.5 Emergency Response Plan

In accordance with legal requirements and prudent utility practices, the Parties will adopt, maintain, and modify as necessary a comprehensive Emergency Response Plan (ERP) that includes provisions for public outreach and communications as well as interface with state and local offices of emergency management.

12.6 Communications Protocols and Strategies

The Parties agree that coordinated communications for the councils, staff, and customers of each Party is vital to public confidence in the drinking water supply. The Managing Agency, with the aid and assistance of the Management Committee, has and will adopt communications protocols and strategies. The protocols and strategies may be included in other plans such as the Operations Plan, WMCP or ERP, or a separate document. Communications protocols and strategies will be performance based and placed in documents deemed best suited to provide guidance to each Party depending on the circumstances.

Any communications plan or protocol will endeavor to provide consistent, timely, and clear messaging with updates as additional information is discovered. Each Party shall have a designated point of contact or alternate (Designee) to give and receive notifications from the other Party at any and all times. It shall then be the responsibility of the Designee to communicate and disseminate information internally. Except where required by law, it will be at the discretion of the Party as to how and what information it provides to its customers. The Parties will endeavor to jointly coordinate the content of any information to be released to the public. Any public press releases or statements shall be provided to the other Party's Designee if time allows.

The Managing Agency will provide notice to the Designee regarding any issue affecting water supply, water quality, need for curtailment, or other

emergency measures as soon as reasonably practical under the circumstances. The Managing agency will provide updated information as it is reasonably verified. The Designee will be responsible to communicate with the Designee's appointing Party.

12.7 Alternate Supply

The Parties recognize and agree that in curtailment events, Tigard is in the best position to mitigate against adverse effects by accessing alternate interim water supply from multiple sources. (Alternate Supply). These Alternate Supplies allows Tigard to reduce or eliminate demand on the Supply Facilities or to provide water to Lake Oswego, all to Lake Oswego's benefit. In such cases where Tigard suspends or reduces its demand on the Supply Facilities to enable Lake Oswego to supply its customers by using Alternate Supply or provides Alternate Supply to Lake Oswego, Lake Oswego agrees to compensate Tigard for the direct and indirect cost of Alternate Supply. Tigard's selection of Alternate Supply shall be outcome based made in good faith considering cost, water quality, availability, and operational efficiency.

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 other Party and stating a date for termination which may not be less than two (2) years from the date of notice. The remaining Party receiving notice of termination will have the first option to purchase the terminating interest. If Tigard terminates in whole or in part, the purchase price will not include any value for water as those water rights remaining 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 18 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, unless the agreement specifically provides for such release. 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. If the other Party determines not to purchase, the selling 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, as agreed by the Parties 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, begins to correct the default within the applicable period and continues corrective efforts with reasonable diligence until a cure is completed, 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 presents a cure plan

that complies with all laws and regulations, the notice of default shall be suspended 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 or request Dispute Resolution, the non-defaulting Party may pursue rights and remedies under this Agreement.

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 terminated and dissolved by mutual agreement of the city councils. 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 Water Supply to Tigard

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 18 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. 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, operation by or for a private entity or person, or 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 arising out of this

Agreement 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. This Agreement obligates the Parties to achieve the mutual benefit of the Supply Facilities, Property, and Water Rights. Each Party agrees to bring forward issues regarding past performance or anticipated performance of obligations and duties at the earliest reasonable opportunity so that the Parties can work toward solutions in an attempt to avoid formal declaration of default. The Dispute Resolution process is to encourage solutions at the earliest stage through negotiation.

14.2 Dispute Resolution Steps

Step One: (Negotiation)

Either Party may give notice and description of the dispute (Notice). The city managers or their designees shall meet 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 and ratified by the governing bodies.

Step Two: (Mediation)

If the dispute cannot be resolved at Step One within thirty (30) days after Notice is given, the Parties shall submit the matter to non-binding mediation in accordance with ORS Chapter 36. The Parties shall attempt to agree on a mediator (Neutral). If they cannot agree, the Parties shall request a list of five (5) Neutrals from an entity or firm providing mediation services. The Parties shall mutually agree on a Neutral from the list provided. Any common costs of

mediation shall be shared equally by the Parties. The Parties shall make good faith efforts to conclude mediation within 60 days after selection of the Neutral. If the issue is resolved at this step, a written determination of such resolution shall be signed by each city manager and ratified by the governing bodies.

Step Three (Litigation or Mutually Agreed Arbitration)

After exhaustion of the preceding processes, either Party may elect to submit all disputes or claims arising out of this Agreement to the Circuit Court of the State of Oregon for the County of Clackamas. However, if both parties mutually agree, the dispute may 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 Party shall select an arbitrator and the two shall appoint a third arbitrator. All costs of the arbitrators and arbitration proceedings shall be borne equally. The arbitrators may determine a different allocation of these costs if they find a Party asserted a frivolous claim or position. The Oregon Rules of Civil Procedure relating to discovery and the Oregon Evidence Rules will apply. The decision of the panel shall be binding and may be enforced by entry of an award as a judgment. 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
NOTICES

Any notice herein required or permitted to be given will 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 will 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

With a copy to:
City of Lake Oswego
City Attorney
380 A Avenue
PO Box 369
Lake Oswego, Or 97034

TIGARD

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

With a copy to:
City of Tigard
City Attorney
13125 SW Hall Blvd
Tigard, OR 97223

ARTICLE XVI
GENERAL PROVISIONS

16.1 Instruments of Further Assurance

From time to time, at the request of a Party, each Party will, without further consideration, execute and deliver such further instruments, and take such

further action as may be reasonably required to fully effectuate the purposes of this Agreement.

16.2 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.

16.3 Assignment, Sale or Transfer

No Party has 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.

16.4 Severability

In case any one or more of the provisions contained in this Agreement is found to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein will not in any way be affected or impaired thereby.

16.5 Counterparts

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

16.6 Headings

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

16.7 Force Majeure

No Party will 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 will 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 will endeavor to the extent reasonable to remove the obstacles which preclude performance.

16.8 Consolidation. Merger, Annexation

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

16.8.2 Any new entity created by change of organization involving a Party to this Agreement requires 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 will not be unreasonably withheld. If the surviving or successor entity is approved, the original Party's obligations and rights hereunder shall be binding upon and inure to the benefit of the surviving or successor entity and that entity will be subject to all obligations of this Agreement.

16.8.3 Annexation of or provision of service to an area beyond that area identified for each Party in this Agreement and any transfer of a Party's territory to a water authority formed by one or more cities, water districts, or both, requires the prior consent of the other Party, which will not be unreasonably withheld considering capacity and demands and other system factors. Annexations or service to identified areas do not require consent.

16.9 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.

16.10 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 or penalties (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.

16.11 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.

16.12 Future Modifications

Every five (5) years, the Partnership Committee may review this Agreement to determine if modifications to this Agreement are necessary or desirable.

However, such modifications require approval of each Party's city council.

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

[Signatures on following page]

CITY OF LAKE OSWEGO

Mayor

Dated

City Recorder

Dated

City Attorney

Dated

CITY OF TIGARD

Mayor

Dated

City Recorder

Dated

City Attorney

Dated