

**TERM SHEET**  
**IGA FOR RIGHT OF WAY USE**  
**BETWEEN THE**  
**LAKE OSWEGO TIGARD WATER PARTNERSHIP AND THE CITY OF WEST LINN**

1. **PURPOSE.** The purpose of the Agreement is to authorize the Partnership to place facilities to transmit water from the Partnership's treatment plant to the City of Lake Oswego's distribution system within the City's public rights of way.
2. **DURATION.** The term of this Agreement commences upon execution by all Parties. The Agreement is perpetual and shall not expire without the written consent of both parties.
3. **PAYMENT.** The Partnership will pay the City a single lump sum payment of five million dollars (\$5,000,000.00) for use of its public right of way by Partnership pipelines constructed after June 1, 2013. Payment shall be made to the City within sixty (60) days after the City issues building permits and the Partnership begins construction in the City's right of way. The payment shall be used to make:
  - a. Capital improvements to West Linn's water system, such as replacement of the Bolton Reservoir or other such improvements, in accordance with the West Linn Water System Master Plan, or
  - b. Improvements to Highway 43, as identified in the Highway 43 Concept Plan.
4. **ADDITIONAL FEES AND CHARGES.** The Parties agree that the payment in Section 2 is a one-time fee for use of the right of way and precludes the City from charging the Partnership a franchise or other similar fee for water transmission structures and pipelines in existence prior to December 31, 2012, and located within the same rights-of-way. However, to the extent authorized by law, this Agreement is subject to the Charter of the City of West Linn and all general ordinance provisions, including the applicable provisions of the West Linn Community Development Code and the West Linn Public Works Standards, and any other applicable regulations, state statutes, or federal provisions. Nothing in this Agreement shall be deemed to waive the requirements of the various City codes and ordinances regarding permits, licenses, permit fees, business licenses, building, public works, or other fees to be paid that are generally applicable to other similar businesses operating within the City, or that apply to similar types of construction.
5. **RIGHT TO OCCUPY PUBLIC RIGHT OF WAY.** The City grants the Partnership the right to occupy its public right of way for the purpose of construction, use, operation, maintenance, repair, and replacement of the Partnership's facilities to provide municipal water service to the Partnership, and to provide emergency municipal water service to the City. [Consider listing the specific rights-of-way.]
6. **PRE-CONSTRUCTION APPROVAL.** Prior to the commencement of any construction, relocation or repair of Partnership's facilities upon, over, under or across any right of way of the City, the Partnership will provide not less than 72 hours written notice to the City Engineer of the proposed location and nature of the work. The Partnership shall obtain written approval from the City Engineer prior to the commencement of such work. The approval of the City Engineer shall not be unreasonably withheld.
7. **WORK WITHIN RIGHT OF WAY.** Before the Partnership conducts work involving excavation in the right of way, the Partnership shall apply for a permit and shall comply with any and all special conditions relating to scheduling, coordination, permitting, locating of facilities, restoration, and public safety as determined by the City, unless emergency conditions exist. After obtaining any permits required by the City, as well as complying with ORS 757.542 et seq. (Oregon Utility Notification Center) as those statutes may be amended from time to time, the Partnership may make all necessary excavations within the right of way for the purpose of installing, repairing, or maintaining the Partnership's facilities, except that in the case of an

Emergency, no permit shall be required prior to excavation. All of the Partnership's work under this Section shall be completed in strict compliance with all applicable rules, regulations and ordinances of the City.

- a. Emergency Repairs.** In the event emergency repairs to Partnership's facilities are necessary, the Partnership may conduct emergency work at any time and must provide the City Engineer with written or oral notice of emergency work as soon as reasonably possible, no later than five (5) business days after the emergency work has commenced. If permits are required by City, the Partnership shall apply for appropriate permits the next business day or as soon as reasonably possible following discovery of the Emergency. In any event, within thirty (30) days of beginning emergency repairs or construction, the Partnership shall provide the City Engineer with a map in electronic, read-only format of the general location of excavations, repaving, and any new facilities.
  - b. Reasonable Care.** All excavations made by the Partnership in the right of way shall be properly safeguarded for the prevention of accidents. All work completed by the Partnership shall be conducted with reasonable care to minimize risks to those using the right of way and minimize damage to public and third party property. Any work completed by the Partnership within the right of way may be inspected by the City to determine whether it has been placed in its approved location and in accordance with City requirements and standards according to the Partnership's permit issued by the City. Non-conforming work will be corrected with work conforming to the applicable standards at no cost to the City. If emergency work has been completed by the Partnership in the right of way and the City determines such work was not completed in a City approved location or in accordance with City requirements and standards, the City shall notify the Partnership and provide the Partnership with sixty (60) days after the emergency has passed to correct the deficiencies.
- 8. RESTORATION OF RIGHT OF WAY.** The Partnership shall restore the right of way disturbed by any excavation by the Partnership to at least the same condition that it was in prior to excavation, in accordance with generally applicable City standards. If the Partnership fails to restore the right of way to at least the same condition that it was in prior to the excavation, the City shall give the Partnership written notice and provide the Partnership a reasonable period of time, not to exceed thirty (30) days, to restore the right of way. If the work of the Partnership creates a public safety hazard as determined by the City Engineer, the Partnership may be required to repair or restore the right of way within twenty-four (24) hours notice from the City, or such time as agreed between the City Engineer and the Partnership, taking into consideration weather and other relevant factors. Should the Partnership fail to make such repairs or restorations within the aforementioned time frames, the City may, after providing notice to the Partnership and a reasonable opportunity to cure, refill or repave (as applicable) any opening made by the Partnership in the right of way and the associated expense shall be paid by the Partnership. The City reserves the right, after providing notice to the Partnership, to remove or repair any work completed by the Partnership, which, in the determination of the City Engineer is inadequate. The City's cost of repair, including the cost of inspection, management, and supervision, shall be paid by the Partnership. In the event that the Partnership's work is coordinated with other construction work in the right of way, the City Engineer may excuse the Partnership from restoring the right of way, provided that as part of the coordinated work, the right of way is restored to good order and condition in accordance with City standards.
- 9. CITY IMPROVEMENTS.** Nothing in this Agreement shall be construed in any way to prevent the City from excavating, grading, paving, planking, repairing, widening, altering, or completing any work that may be needed or convenient in the right of way that is consistent with applicable codes. The City shall coordinate any such work with the Partnership by providing the Partnership not less than 72 hours advance written notice of any work the City will undertake

over, under, or within 7.5 feet of the centerline of the Partnership's facilities. The City shall confer with the Partnership to determine methods to avoid or minimize, to the extent reasonably foreseeable, any obstruction, injury or restrictions on the Partnership's use of its facilities. The City shall only bear responsibility for damages to the Partnership's facilities to the extent the damage or loss is the direct and proximate result of willful, intentionally tortious, negligent or malicious acts and/or omissions by the City, its employees, or agents. In such case, the City shall indemnify and hold the Partnership harmless against any and all claims, damages, costs and expenses, including attorney's fees and costs, arising from such acts and/or omissions, subject to any applicable limitations in the Oregon Constitution and the Oregon Tort Claims Act.

**10. THIRD PARTY IMPROVEMENTS.** The City shall notify the Partnership by providing the Partnership not less than 72 hours advance written notice of any planned improvements that will be undertaken by a third party over, under, or within 7.5 feet of the centerline of the Partnership's facilities. The City shall notify a third party that proposes work within 7.5 feet of the centerline of the Partnership's facilities of the existence and type of facility in that location. The Partnership will be notified and given the option to attend project application meetings for projects that may affect its facilities. The City shall not be required to provide notice for any emergency repairs undertaken by a third party. In the event that a relocation, extension, or alteration of the Partnership's facilities is requested by or for the benefit of a third party, Partnership shall seek reimbursement from the third party and not from the City.

**11. MISCELLANEOUS PROVISIONS.**

- a. **As-Built Drawings; Confidential.** The Partnership will furnish the City with record drawings in electronic, read-only format showing the location of all the Partnership's facilities within sixty (60) days of the completion of construction, relocation, repair, or replacement. In the interests of public safety, and pursuant to ORS 192.501(22), these "as-built" drawings shall be confidential records exempt from disclosure.
- b. **No Waiver.** By signing this Agreement, the Partnership is not waiving its rights to challenge, or otherwise dispute the legality, validity, or enforceability of any changes to ordinances, resolutions, rules or orders the City enacts after the effective date of this Agreement. The failure by any party to enforce any provision of this Agreement shall not constitute a waiver by that party of that provision or of any other provision of this Agreement.
- c. **Non-exclusive Use.** This Agreement is not exclusive and shall not be construed to limit the City from granting rights, privileges and authority to other persons similar to, or different from, those set forth in this Agreement.
- d. **Amendment Provisions.** The terms of this Agreement may be amended by mutual agreement of the Parties. Any amendments shall be in writing, shall refer specifically to this Agreement, and shall be executed by the Parties.
- e. **Written Notices.** All written notices required under this agreement shall be sent to:

Lake Oswego Tigard  
Water Partnership:

General Manager  
1<sup>st</sup> Line Address  
City, Oregon

City of Lake Oswego:

City Manager  
City of Lake Oswego  
P.O. Box 369  
Lake Oswego, Oregon 97034

City of West Linn: City Manager  
City of West Linn  
22500 Salamo Road  
West Linn, Oregon 97068

City of Tigard: City Manager  
City of Tigard  
13125 SW Hall Blvd  
Tigard, Oregon 97223

- f. **Indemnification.** To the fullest extent permitted by law, the Partnership shall indemnify and hold harmless the City against any and all claims, damages, costs and expenses, including attorney's fees and costs, to which the City may be subjected as a result of any willful, intentionally tortious, negligent, or malicious acts and/or omissions of the Partnership, or its affiliates, officers, employees, agents, contractors or subcontractors, arising out of the rights and privileges granted by this Franchise.
- g. **Severability.** Should any provision or provisions of this Agreement be construed by a court of competent jurisdiction to be void, invalid or unenforceable, such construction shall affect only the provision or provisions so construed, and shall not affect, impair or invalidate any of the other provisions of this Agreement which shall remain in full force and effect.
- h. **Attorney Fees.** In the event an action, lawsuit or proceeding, including appeal there from, is brought for failure to fulfill or comply with any of the terms of this agreement, each party shall be responsible for their own attorney fees, expenses, costs and disbursements for said action, lawsuit, proceeding or appeal.
- i. **Headings.** The headings of this Agreement are for convenience only and shall not be used to construe or interpret any provisions of this Agreement.
- j. **Merger.** This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.
- k. **Binding Effect.** The terms of this Agreement shall be binding upon and inure to the benefit of each of the parties and each of their respective administrators, agents, representatives, successors and assigns.
- l. **Termination?**
- m. **Dispute Resolution.**