

SUMMARY OF LAKE OSWEGO-TIGARD WATER AGREEMENT

Following the Joint Council presentation on April 15, 2008, respective City Staff have continued to negotiate a draft agreement to capture the points discussed by the Councils. The following are outline points for a two-party intergovernmental agreement to proceed with phased design, permitting, and construction of water system improvements. The first phase will take the parties through construction of the Initial Expansion. After construction and a short period of operation, the parties will meet to discuss whether a governance structure should be modified. Long Term Expansion or other projects are left to the future depending on demand.

PHASE 1 (2008-2016)

A. Project Description (Definitions, Article VI, Article IX)

- Identification of current water supply assets;
- Identification of assets to be built (Carollo Report); and
- Initial Buy-in by Tigard of approximately \$2 million. If Initial Expansion Facilities not built, Agreement ends and Lake Oswego repays Tigard amount invested plus interest at LGIP rate. Tigard has no further interest.
- Proportional system ownership upon completion.
- Definition of Planned System Expansion. The Initial Expansion Project, as detailed in the Lake Oswego and Tigard Water Service Area Joint Water Supply System Analysis, dated July, 2007, will increase capacity to 32 mgd by 2016. At the completion of Initial Expansion, the Lake Oswego allocation would be 18 mgd and the Tigard allocation would be 14 mgd.

• Long Term Expansion

- Perform work with own forces and repayment through approved budget for actual, incurred charges.
- Contracting Party with consultants and contractors.
- Permit Applicant with Federal, State, and Local Agencies.
- Day-to-day management during and post construction, insurance, bills (invoices, books and records, staffing)
- Lake Oswego may propose an outside Project Manager, but all parties must agree.
- Budget preparation.
- Asset Management Program.
- No third party operator without Council consent.

C. Technical Committee (3.2)

- Technical representatives from each City. The Technical Committee will review all design, permitting, and construction issues and make recommendations to the Managing Agency or Oversight Committee as required or necessary.
 - analysis of requests for proposals;
 - direction to the consultant teams;
 - whether a traditional design-bid-build method should be used or alternate contract delivery method should be used;
 - schedules
- The Technical Committee shall meet as necessary to keep project on schedule;
- Lake Oswego may propose an outside Project Manager, but all parties must agree

D. Oversight Committee (3.3)

- Two members appointed at the pleasure of each party;
- Meets as necessary to keep the project on schedule, but not less than quarterly;

- Review proposed projects and related matters and make recommendations to the Managing Agency or City Councils as required or necessary;
- Review and recommend all proposed budgets during design, construction, and operation, and prior to submission to the respective city councils

E. Council Decisions (3.6)

- Budget
- Capital Improvement Program
- Property Matters
- Operational Protocols
- Initial and Long Term Expansion
- New Partners
- Modification, Amendment, Dissolution
- Third-Party Operator.

F. Land (Articles IV, V)

- Transfer of identified the Lake Oswego properties to a joint tenancy in common ownership with Tigard via a warranty deed at conclusion of Initial Expansion construction. Until completion, Tigard has equitable property interest.
- Proportionate to Supply Facility ownerships (5.1);
- Valuation by MAI Appraisal;
- Additional land will be acquired in the same ultimate ownership proportions as in the Supply Facilities
- If Project does not go forward, cessation of Tigard Interest.

G. Design of Facilities (Article VI)

- Procurement by Lake Oswego procedures with Lake Oswego as the Managing Agency for the selection of design firms;
- Tigard must approve design firms;

- Technical Committee will develop parameters with the consultant for improvements to all components of the Supply Facilities (6.3)
- Designs recommended by Technical Committee and Oversight Committee for approval by the respective Councils.

H. Permitting (6.2)

- Lake Oswego, with the advice and consent of Tigard, will be the responsible permitting agency to obtain all permits, either through the consultant, contractor, or its own forces;
- Review and approval by Tigard;
- The anticipated or potential permits necessary are:
 - Section 404 Permit under the Clean Water Act,
 - Division of State Lands/Army Corps of Engineers
 - Any Oregon Division of State Lands Permit in addition to the 404 Permit
 - Water Resources Department
 - Oregon Department of Fish and Wildlife, United States Fish & Wildlife, or NOAA through consultation, under Endangered Species Act
 - Any design review or other land use permit
 - Any other permit or approval required for the project

I. Construction Management (6.3)

- Lake Oswego as Managing Agency;
- In conjunction with the Oversight Committee and Technical Committee, recommendation will be made to each Council regarding the contracting methods to be used for construction;
- Lake Oswego shall employ its Local Contract Review Board Rules and other purchasing rules for the projects and process.
 - Progress payment requests, change orders, punch list items and construction in general.

- Change order approval authority without necessity of Council review and approval is Lake Oswego's purchasing rules (3.1).

J. Design and Construction Payments (6.3.2)

- As progress payments requests are received during design and construction, Lake Oswego will pay
- Lake Oswego will bill Tigard according to the allocation of assigned capacity of the components.



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- Lake Oswego shall continue as the Mana
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Expansion.

Article IV, VII)

K. Allocation of Proportionate Interest (Arti

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VII).

- Initial Expansion Interest (4.2 and Exhibi
- Allocation of costs based on proportionat
adjusted by parties, as necessary (Article
- Amenities or community improvements r
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- Capital Improvements Based upon Future Regulatory Matters. If additional construction to meet new regulatory requirements occurs, Lake Oswego will coordinate financing, design, and construction of those improvements, which will be distributed on the basis of proportionate capacity ownership.
- Long Term Expansion or other approved Projects will allocate costs as negotiated.

L. Long Term Expansion or Other Expansion of the System (Article IX)

- Use of the system should be accomplished first by utilizing the existing capacity to serve the parties
- Expand only after all capacity is projected to be used within a reasonable planning horizon
- Leasing (Article X)
- Planning document (8.2)
 - Submitted at least every five years
 - 10 year horizon for capacity and demand
- New opportunities for the system shall first be brought to the Parties for consideration and joint action.
- If one party chooses not to participate, the other party may proceed.
- A party may propose expansion to the other.
 - If the party declines, the proposing party may proceed, so long as no adverse operational or financial impacts.
 - If each party agrees, then they shall negotiate a project to allocate costs and responsibilities.
- Long Term Expansion presumed for Lake Oswego, but depends on demand as to when built. Tigard or Lake Oswego may propose expansion. Lake Oswego must choose:
 - Sell all or a portion of 6 mgd to Tigard.
 - Lake Oswego builds 6 mgd and leases to Tigard.
 - Tigard builds 6 mgd subject to Lake Oswego's ability to buy back all or a portion.

- o Other mutual agreement.

M. Leasing

- A party shall be required to lease to the other such unused capacity in the system to the extent available according to the planning document.
- The term of the lease shall be not less than one year nor more than ten, upon such conditions as the parties agree.
- The lease shall be a short-term measure that allows the party to defer expansion or new construction of system components and to provide the parties with a near term, stable planning horizon.
- Lease payment shall be based upon formula unless parties mutually agree otherwise (10.5).

N. O&M Payments (Article VII)

- The budget will provide for each party's anticipated share of operation and maintenance based upon utility cost of service principles
- Approval by both parties.
- Operation and maintenance shall be charged based on the amount of water use in cfs multiplied by the O&M expense rate.
- Renewal, replacements, and system upgrades shall be made proportional to ownership and billed based upon need.
- Special allocation for site amenities
- Payment is due 30 days after invoice.

O. Sales or Lease to Others (Article XI)

- Except for existing wholesale customers and existing mutual aid agreements, no party may contract for sale or lease of water to third parties without the approval of the other party.
- Sales will be joint with net revenues to each party in proportion to ownership
- A party may add wheeling charges

P. Operations Committee/Operations Manual (Article XII)

- Within six months from the date of substantial completion of the Initial Expansion, the parties shall agree on an Operations Manual for the system.
- The parties shall appoint at least one person technically proficient in the utility system operations to the Operations Committee. The Operations Committee shall report to the Oversight Committee not less often than quarterly

S. Total or Partial Termination and Withdrawal or Sale of Assets (Article XIII)

- Either party may elect
- Effective date would be two years from the date of notice unless otherwise agreed to.
- The parties shall meet for the purpose of establishing the purchase price.

○ Unless the parties agree otherwise, the sale price is deposited

- Dissolution of the Partnership (13.6)

- If the parties mutually agree, the Partnership may be dissolved and the parties shall agree on a plan of dissolution

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- All debts and obligations are paid or each party shall assume its proportionate share of debts and obligations unless otherwise provided
- Hold harmless to others
- The parties shall execute those documents necessary to vest proportionate ownership of the Supply Facilities in each party and execute a post-dissolution management agreement
- Tigard shall always be assured of having a source to provide 14 mgd per day water supply to the extent it retains the Supply Facilities following dissolution and uses the water in its service area. A Water Supply Agreement must be negotiated.

Q. Dispute Resolution (Article XIV)

- Negotiation by the City Managers and ratified by the City Councils
- Mediation (Nonbinding/Approved by Councils)
- Arbitration: Three arbitrators.
 - Panel of three unless the parties agree on a single arbitrator
 - Nonbinding
- Clackamas County Circuit Court.
- Each party bears its own legal costs, witness fees, and other costs

R. Other Provisions (Article XVII)

- No assignment or transfer without consent of the other party
- Extension of Party's water supply service by the identified Supply Facility to an area beyond that area identified for each party in the Carollo Report shall require the prior consent of the other party, and shall not be unreasonably withheld considering capacity and demands and other system factors
- Annexations or service to identified areas in the Carollo Report shall not require consent
- Each party agrees to indemnify the other from its own acts or negligence.

S. 2016 And Beyond (Article XV)

(1) Future Agreements and Governance (2018)

- Within three years after completion of Initial Expansion construction
- Oversight Committee will meet and in good faith negotiate whether this agreement shall be amended or a new agreement executed
- If not, continue this agreement with periodic modifications as deemed necessary by the parties, or
- Replace this Agreement with a new Agreement; or
- Create a Supply Agency via:
 - an intergovernmental under ORS Ch. 190
 - Members appointed by each Council
 - May provide for transfer of assets to the new entity
 - Agreement on what powers are vested by each city in the new entity
 - Method of voting and decision making
 - Decisions made at the intergovernmental entity level
 - Decisions retained at the Council level
 - Consent to Joinder of New Partners