

ALBANY AND MILLERSBURG INTERGOVERNMENTAL AGREEMENT FOR JOINTLY-OWNED WATER FACILITIES

THIS AGREEMENT is made and entered into this 16 day of MAY 2016 by and between the City of Albany, a municipal corporation of the State of Oregon (Albany) and the City of Millersburg, a municipal corporation of the State of Oregon (Millersburg). The respective Council or designated representative of each City is referred to as “party” or “parties” in this Agreement. This Agreement defines the operation, maintenance, and cost sharing of the jointly-owned Water Facilities.

WITNESSETH:

WHEREAS, Albany and Millersburg jointly-own water facilities, including the raw water intake, pump station and pressure main, the Albany-Millersburg Water Treatment Plant (A-M Plant), the finished water reservoir, and the finished water pipeline up to but not including the Millersburg water meter. These jointly-owned water facilities are shown in Exhibit A and collectively referred to in this document as the A-M Water Facilities; and

WHEREAS, Albany employs the operator designated as the “Direct Responsible Charge” (DRC), in conformance with OAR 333-061-0225, to supervise the A-M Water Facilities up to the point of delivery to the Millersburg public water system; and

WHEREAS, Millersburg’s public water system begins downstream of a 12-inch water meter near the intersection of Century Drive NE and Berry Drive NE that Albany owns, installed, and maintains; and

WHEREAS, Albany and Millersburg’s combined water rights and permits equal their projected combined maximum day demands at build-out and the communities’ net water requirement at build-out from the A-M Water Facilities is 26 million gallons per day (mgd); and

WHEREAS, in an emergency or during water curtailment, when the A-M Water Facilities are not fully functional, the Vine Street Water Treatment Plant (Vine WTP) can deliver potable water to Millersburg’s public distribution system through the emergency intertie located at 3246 Salem Avenue NE and shown in Exhibit B.

NOW, THEREFORE, BE IT RESOLVED that the “Intergovernmental Agreement” to operate and maintain the A-M Water Facilities that was executed on July 25, 2002, between Albany and Millersburg is hereby repealed; and

BE IT FURTHER RESOLVED by Albany and Millersburg that the parties agree to cooperate in the operation, maintenance, and cost sharing of the production and delivery of potable water to both communities as follows:

- 1. Current Rights and Buildout Demands.** Albany and Millersburg’s combined water rights and water use permits are equal to their projected combined maximum day demand at build-out as shown in Table 1.

TABLE 1: WATER RIGHTS AND DEMANDS

	cfs	mgd
Albany 1878 Water Right	21	
Albany 1979 Water Use Permit	29	
Millersburg 1989 Water Use Permit	22	
TOTAL	72	46
Albany MDD at Build-out		40
Millersburg MDD at Build-out		6
TOTAL	72	46

2. **Treatment Plant Capacities.** The A-M Plant and Vine WTP are assumed to meet Albany and Millersburg's combined maximum day demand at build-out as shown in Table 2:

TABLE 2: TREATMENT PLANT CAPACITIES (mgd)

	Current	Build-out
Vine Street Water Treatment Plant	16	20
A-M Water Treatment Plant	12	26
TOTAL	28	46

3. **A-M Water Facility Current Capacity and Ownership.** The current capacity and ownership share of the jointly owned A-M Water Facilities are shown in Table 3:

TABLE 3: CURRENT CAPACITY AND OWNERSHIP SHARE OF A-M WATER FACILITIES

Facility	Units	Current Capacity	Ownership Share	
			Albany	Millersburg
Raw Water Intake & Pipeline	mgd	26	20	6
Raw Water Pump Station	mgd	12	10	2
Raw Water Pressure Main	mgd	26	20	6
Water Treatment Plant	mgd	12	10	2
Reservoir	mg	5.7	2.85	2.85
Finished Water Pipeline	mgd	26	20	6

4. **Water Rights Utilization.**

- (a) Existing water rights and water use permits shall remain in the name of the party that obtained them.
- (b) During times when there are no restrictions on surface water withdrawals at the affected diversion points, the parties agree that all existing water rights and water use permits shall be used to the benefit of both parties, without regard to ownership or current individual demands.
- (c) During times when there are partial restrictions on surface water withdrawals and some junior rights become unavailable, then the available surface water rights shall be applied for use of both communities to the extent allowed by the restriction.
- (d) During times when restrictions on surface water withdrawals are so severe even the most senior rights are affected, then allowed surface water withdrawals shall be applied first for use of the party that owns the surface water rights.
 - (i) Albany will utilize their 1878 water right at the A-M raw water intake to provide water during times of drought conditions for both communities, to the extent allowed by the Oregon Water Resources Department. Millersburg is entitled to access the portion of Albany's 1878 water right used at the A-M raw water intake, subject to the same user restrictions as apply to Albany.
- (e) Both parties agree to utilize their water use permits to allow for full certification of the individual Albany and Millersburg water use permits considering senior rights first.
- (f) The parties agree to coordinate water conservation and management plans and projected demands developed for their respective water supply systems.
- (g) If additional water rights are required or desired in the future to meet projected long-term needs or provide reserves for present and future users, the additional water rights shall be sought jointly to the extent possible.

5. **Water Supply during Emergency.** In the event of an emergency that causes the A-M Water Facilities to not be operable for an extended period of time, Albany will supply Millersburg with treated water from the Vine WTP through the emergency intertie at 3246 Salem Avenue NE. The amount of water provided from

the Vine WTP is subject to the same user restrictions as applied to Albany in the event that the Vine WTP does not have sufficient capacity to meet the demands of both parties at the time of the emergency. The cost of water provided during an emergency is subject to the rates in Section 7 Budgets, Rates, and Expenditures.

6. **Water Supply during Curtailment.** In the event of a severe or critical water supply shortage in one or both communities, and at one or both of the Water Plants, water curtailment measures will be activated as required to respond to a specific event. Millersburg agrees that its Curtailment Plans shall be at least as restrictive as that adopted by Albany. Depending on the circumstances, curtailment measures may apply to both communities, one community, or smaller, more localized portions of the water system. The parties agree to implement Water Curtailment Plans and measures for their respective water supply systems in the event of a severe or critical water supply shortage.
7. **A-M Water Facility Capacity Management and Expansion.** The build-out capacity and ownership share of the jointly owned A-M Water Facilities are listed in Table 4. Both parties agree to manage the available capacity and provide additional capacity in an efficient and cost-effective manner. The facilities should be expanded before the parties are projected to use all existing capacity. In determining the appropriate time to begin expansion of the system, the time required for environmental reviews, designs, permits, and construction should be considered.

TABLE 4: BUILD-OUT CAPACITY AND OWNERSHIP SHARE OF A-M WATER FACILITIES

Facility	Units	Build-Out Capacity	Ownership Share	
			Albany	Millersburg
Raw Water Intake & Pipeline	mgd	26	20	6
Raw Water Pump Station	mgd	26	20	6
Raw Water Pressure Main	mgd	26	20	6
Water Treatment Plant	mgd	26	20	6
Reservoir	mg	11.4	5.8	5.6
Finished Water Pipeline	mgd	26	20	6

8. **A-M Water Facility Governance.** The Albany-Millersburg Joint Water/Wastewater Management Committee (herein after called Management Committee) was established in 2002 to oversee the A-M Water Facilities covered by this Agreement.
 - (a) Each party shall appoint (and fill any subsequent vacancies) three persons to the Management Committee who shall serve at the pleasure of their respective elected Councils. Either party may appoint alternate members who may temporarily replace an absent member.
 - (b) The Management Committee shall hold meetings annually or as needed.
 - (c) Four members shall constitute a quorum for the transaction of business. An affirmative vote of four members of the Management Committee, with at least two (2) from each party, shall be necessary to decide any matter.
 - (d) The Management Committee shall elect from its membership a Chairperson and a Vice-Chairperson. Such election or reaffirmation shall occur annually and the Chairperson and Vice-Chairperson shall not be from the same party.
9. **A-M Water Facilities Operating Entity.** The parties agree that Albany shall supervise all A-M Water Facilities up to the point of delivery to the Millersburg public water distribution system. As the Operating Entity, Albany will:
 - (a) Employ the operator designated as the “Direct Responsible Charge” (DRC) for the A-M Water Facilities.
 - (b) Perform the day-to-day operations and maintenance services for all A-M Water Facilities.

- (c) Provide general administration, accounting, budgeting, records management, reporting, and such other duties as required for operations.
- (d) Manage capital projects and approve contracts and change orders.
- (e) Have the authority to take reasonable and prudent action to protect the water system assets, prevent or minimize liability to the parties, comply with permits, and otherwise act in good faith for the benefit of both parties.
- (f) Take up such actions reasonably necessary during an emergency.

10. Budgets, Rates, and Expenditures. Each party shall budget and appropriate its proportionate share of the costs to operate and maintain the A-M Water Facilities and emergency water facilities.

- (b) **Total Fiscal Year A-M Water Facility Budget:** Albany will prepare and deliver to Millersburg a line item budget for A-M Water Facilities personnel, materials and services, and capital project expenditures in the spring of each year. If needed, a meeting shall be called to discuss budget details.
- (c) **Millersburg-Only Summary Budget:** To support Millersburg with their budgeting process, Albany will also prepare and deliver to Millersburg a summary exhibit of Millersburg's share of costs for the fiscal year. This summary will estimate operating costs based on Millersburg's average share of metered water use in the previous year and estimate capital costs based on Millersburg's ownership share of the budgeted expenses.
- (d) **Capital Maintenance Costs:** There are anticipated and unanticipated capital maintenance costs. Costs for anticipated capital maintenance are budgeted and costs are shared according to the ownership share of the facility being improved. As soon as unanticipated capital maintenance items are identified, the need, total cost, and cost share will be provided to Millersburg and, depending on the magnitude, may require a meeting of the Management Committee to discuss.
- (e) **Cost of Emergency Water:** The cost of emergency water includes the cost of readiness to provide service and the actual cost of providing emergency water.
 - (i) The additional cost incurred by Albany to provide a redundant water source at the Vine WTP and to maintain the emergency intertie valve at 3246 Salem Avenue NE ready to be opened during an emergency shall be reimbursed by Millersburg on a quarterly basis. This cost shall be the cost of maintaining the intertie on a time and material basis.
 - (ii) The cost of providing water to Millersburg through the emergency intertie shall be reimbursed by Millersburg on a quarterly basis when an emergency occurs within that quarter. The current rates at the time of the emergency will be applied to water use based on Millersburg's historic water use during the same time period. A surcharge of 10 percent (10%) will be applied to compensate for additional water system operational costs to boost production at the Vine WTP and to balance flows and pressures within the transmission and distribution pipe delivery system.
- (f) **Quarterly Billing:** Albany shall prepare a quarterly invoice for Millersburg that includes Millersburg's share of the cost to produce water at the A-M Plant and pay for capital expenditures. Payments are due within 30 business days of receipt. Late payments shall bear interest at nine (9) percent per annum.
 - (i) **Cost of Water:** Millersburg is charged for their prorated share of producing water at the A-M Plant. The cost per gallon of treated water is determined using the total water produced at the A-M Plant and the total production cost for the quarter. This unit cost is multiplied by the amount of potable water delivered to Millersburg's public distribution system from the A-M Plant by way of a 12-inch water meter near the intersection of Century Drive NE and Berry Drive NE during that quarter.

- (ii) **Capital Costs:** Millersburg is charged for their share of major A-M Plant expenditures based on their ownership share of the facility being improved. The actual ownership share for each facility is applied to the actual capital expenditure for the quarter.

11. Other Terms and Conditions. The following terms and conditions apply to this agreement:

- (a) **Term and Termination.** This agreement begins upon execution and will be in force for a 10-year period unless amended or terminated as provided herein. At the end of the 10-year period, this agreement automatically extends for succeeding 5-year terms subject to the terms herein.
 - (i) **Amendment.** This Agreement may be amended if each party concurs to the proposed amendment in writing, signed by authorized representatives of each party.
 - (ii) **Termination for Breach.** Failure to make a payment when due or other material breach of this Agreement shall allow the nondefaulting party the opportunity to terminate the agreement. In the event of an election to terminate, the nondefaulting party shall give notice and a 30-day period for the defaulting party to cure. If cure cannot be accomplished within 30 days but is diligently begun, the nondefaulting party may grant additional cure time.
 - (iii) **Separation of Assets.** Upon termination, the parties will develop a plan of separation to sell or buy the interests in the assets that include a reasonable schedule to obtain suitable alternate facilities. In the absence of such a plan, the parties shall use Dispute Resolution.
- (b) **Withdrawal and Termination of Membership Sale of Assets.** Any party may elect to terminate its participation in this agreement by giving written notice of its desire to terminate to the other party and stating a date for termination that shall not be less than two years from the date of notice. The nonterminating party shall have the option to purchase the terminating interest, and the parties shall meet for the purpose of establishing the price. The price will be established within 90 days following receipt of notice of termination. If the price cannot be agreed upon, the matter shall be submitted to Dispute Resolution as outlined in this agreement.
- (c) **Water Quality:** Albany agrees to provide potable water to Millersburg that meets water quality standards. In the event of a temporary non-compliance, Albany will comply with all regulatory direction to restore its system to compliance. Albany makes no representations concerning the suitability of Albany's potable water for the Millersburg system or any customer thereof.
- (d) **Indemnification:** Millersburg agrees to indemnify and hold Albany harmless from any governmental or third party claims resulting in any manner from the provision of water from the A-M or Vine WTPs to Millersburg customers consistent with the terms of this agreement. This indemnification clause does not preclude Millersburg from pursuing breach of contract claims against Albany concerning the provision of Albany water to Millersburg.
- (e) **Dispute Resolution.** If a dispute arises between the parties regarding breach of this Agreement or interpretation of any term of this Agreement, or in the event of a three-to-three voting impasse of the Management Committee, the parties shall first attempt to resolve the dispute by negotiation, followed by mediation. If mediation is unsuccessful, the dispute shall be resolved through binding arbitration that shall take place in Linn County, and the prevailing party shall be entitled to such reasonable attorney's fees and costs as may be awarded by the arbitrator. In the absence of an agreement between the parties, either party may apply to the presiding judge of the Linn County Circuit Court for the appointment of suitable mediator(s) or arbitrator(s), and the persons so appointed shall establish the rules of procedure.
- (f) **City Council Approval Required.** No committee or entity created by this Agreement may obligate either city to expend any city funds or take any actions, other than expressly provided herein, without the approval of the respective City Council.

(g) **Severability.** In case any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

(h) **Notices.** Any notice herein required or permitted to be given shall be given in writing, shall be effective when actually received, and may be given by hand delivery or by United States mail, first class postage prepaid, addressed to the parties as follows:

If to Albany: City Manager
 City of Albany
 P.O. Box 490
 Albany, OR 97321

If to Millersburg: City Administrator
 City of Millersburg
 4222 NE Old Salem Road
 Albany, OR 97321

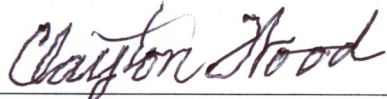
IN WITNESS WHEREOF the parties have caused this document to be executed pursuant to the authority of the respective City Councils, by the Mayor of Albany, and the Mayor of Millersburg.

CITY OF MILLERSBURG:

CITY OF ALBANY:

DATED this 16 day of MAY 2016.

DATED this 11 day of May 2016.



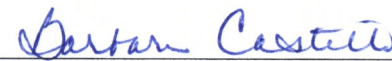
Clayton Wood, Mayor




Sharon Konopa, Mayor

ATTEST:

ATTEST:



Barbara Castillo, City Administrator/Recorder



Mary Dibble, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:



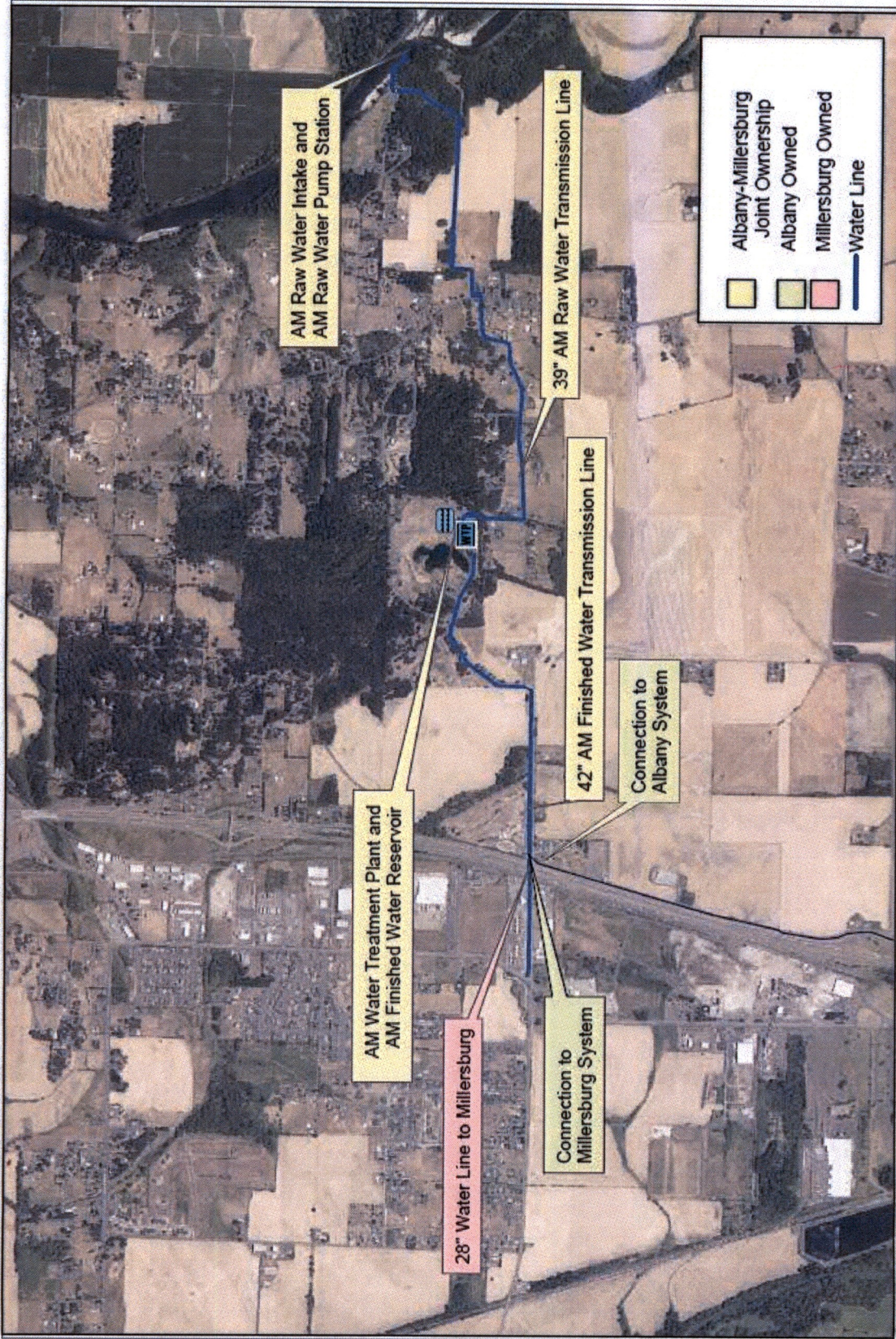
Forrest Reid, Millersburg City Attorney



James Delapoer, Albany City Attorney

EXHIBIT A

Albany-Millersburg Jointly Owned Water Facilities



Albany-Millersburg IGA-Water System Facilities

The City of Albany and the City of Millersburg hereby certify that the information shown on this map is true and correct to the best of their knowledge and belief. This map is not intended to be used for any other purpose. It is the responsibility of the user to verify the accuracy of the information shown on this map.

Document Path: L:\GIS\Shared_Millersburg_2016.mxd
 City of Albany - 310 Waverly Dr NE, Albany, Oregon 97321 (541) 917-7600

Date: 01/26/2016

EXHIBIT B

Albany-Millersburg Emergency Intertie Facilities

