

**CITY OF ALBANY AND THE NORTH ALBANY COUNTY SERVICE DISTRICT
WATER SERVICES AGREEMENT**

THIS AGREEMENT is made and entered in this 21st day of September, 2021 by and between the CITY of ALBANY, a Municipal Corporation, hereinafter referred to as "City," and the North Albany County Service District, a Special District, hereinafter referred to as the "NACSD." The NACSD is a county service district outside the Urban Growth Boundary of the City in rural Benton County that was created in 1990 and that is administered by Benton County with the county commissioners as its governing body. Pursuant to a 1990 agreement between the City and the NACSD, the City currently provides water service to customers in the NACSD.

The City has also provided water supply, operations and maintenance to the Dumbeck Lane Water Service District (Dumbeck) pursuant to, originally, the 2006 Wholesale Domestic Water Sales Agreement and the 2007 Water Distribution System Maintenance Agreement. Both Dumbeck agreements were updated in 2014. The Dumbeck district was unable to maintain governance of its board and was dissolved in September, 2021, and the real property within Dumbeck was annexed into the NACSD on September 21, 2021.

This agreement redefines the 1990 NACSD Agreement to provide water service to properties that were formerly within the Dumbeck Lane Water Service District. Exhibit A provides a map and table with the boundaries of the service district, including the annexed properties.

This agreement supersedes the previous agreements between the City, the NACSD, and Dumbeck as referenced above.

RECITALS

WHEREAS, on May 16, 1989, the Oregon State Health Division adopted Findings of Fact pursuant ORS 222.840 to 222.915 declaring a health hazard to exist in certain portions of North Albany; and,

WHEREAS, on November 13, 1989, the District Governing Body, with the support of the City Council, submitted an alternative plan to health hazard annexation pursuant to ORS 222.885; and,

WHEREAS, on January 19, 1990, the Oregon State Environmental Quality Commission (EQC) granted preliminary approval to the alternative plan; and,

WHEREAS, the alternative plan required transfer of water and sewer facilities to the City and provision of such services by the City; and,

WHEREAS, Comprehensive Plan Policies have been adopted requiring that Albany be the provider of water and sewer services within the Urban Growth Boundary; and,

WHEREAS, on May 27, 1991 City of Albany Ordinance No 4957 was passed to annex the remainder of the district inside the UGB; and,

WHEREAS, the City of Albany has also provided water service to the Dumbeck customers outside the UGB pursuant to a separate agreement dated December 10, 2014; and,

WHEREAS, Dumbeck is dissolved and, in order to maintain water services to its customers, properties within Dumbeck were annexed into the NACSD.

THEREFORE, THE CITY AND THE DISTRICT AGREE:

I. PURPOSE

It is the policy of the parties that the City is the logical and appropriate provider of water services within the North Albany area, and that assumption by the City of such service will provide superior long-term service. To further this purpose, it is agreed that the City shall be the sole supplier of water to areas within the NACSD. The District shall remain as the taxing and legislative authority for the area within the district boundaries until such time as the parties agree that dissolution of the District is in the best interest of the citizens or the City chooses to withdraw annexed territory pursuant to state law.

II. TRANSFER OF OPERATIONS

1. On July 1, 1990, the City assumed administration, operation and maintenance of the water systems in North Albany from the District. The City assumed all rights and responsibilities save those expressly reserved to the District by this agreement. The transfer included delegation of authority to form local improvement districts and levy special assessments for the purpose of constructing sewer and water facilities.
2. On July 1, 1990, the District transferred to the City all funds contained in North Albany County Service District accounts, excluding the water bond debt service fund, which was retired in the early 2000s. The City may expend revenues from time to time to cover the costs of providing the services under this agreement. The District may bill the City and the City shall reimburse the District for the reasonable cost of its remaining administrative duties including insurance, legal costs, changes of District organization, audit costs, etc. Both the City and the District shall be allowed to inspect the records and accounts of the other for the purposes of compiling and completing the Comprehensive Annual Financial Report required by state law.
3. The City shall provide, at a minimum, the water services provided by the District on June 23, 1990. The City agrees to provide water service to all of the current water service customers of the District and to those customers annexed into the District from Dumbeck. The city shall retain the exclusive right to determine whether to extend water services to properties annexed from Dumbeck, but which did not have water service at the time of annexation. However, nothing in this agreement shall be construed to prevent the City from limiting water service when necessary or prudent to manage the water system or water resource (e.g., where

rationing is required, where repairs require interruption of service, where a natural disaster affects service, etc.).

III. WATER RATES

Applicable to all residential, multi-family, and non-residential customers outside city limits and served by water lines within the North Albany County Service District (NACSD):

1. Rate changes in the District shall be linked to water rate changes enacted by the City for customers within the City limits. The District rates shall increase or decrease by the same percentage as City water rates are increased or decreased. The City shall provide the District with twenty days notice and opportunity to comment before changing water rates.

IV. TERM; AMENDMENT

1. This agreement shall be effective through December 31, 2031 at which time it shall automatically renew for successive ten-year terms unless either party has provided the other party with no more than 360 days' and no less than 180 days' written notice from the renewal date of its intent to reopen this agreement for purposes of revising or updating terms and provisions. If, upon reopening of this agreement, the parties are unable to agree on new terms or provisions, this agreement may be terminated, in writing, by either party. Written notice of termination shall not be effective less than two years from the date of written notice to reopen the agreement.

2. Termination for Breach:

In the event that the District fails to discharge any obligation of this agreement, the City may terminate this agreement and discontinue all water service and other obligations incurred herein. Exercise of this remedy by the City shall not require the return of any real or personal property transferred to the City by the District. This remedy is cumulative and in addition to all other remedies available at law or equity.

In the event that the City fails to discharge any obligation of this agreement, the District may terminate this agreement.

3. In the event the City anticipates or experiences a significant water shortage or a water delivery problem which affects or will affect water supply customers, the parties agree to meet to address the problem in a timely manner. Both parties agree that if such a circumstance arises, it is in the public health and safety interests of both the District and the City to develop a solution, to the extent possible, that preserves the City's ability to maintain water supply services to City of Albany customers, while at the same time maintaining minimum water supply to District customers.

V. MEDIATION

It is the intent of the parties that this agreement will be carried out in good faith and with mutual cooperation. To accomplish this purpose, the parties agree to submit any dispute under this agreement which the parties are unable to resolve to mediation before seeking termination for breach or pursuing other legal action to enforce the terms and conditions of this agreement.

VI. NON-SEVERABILITY

Should it be determined by any court of competent jurisdiction that any portion of this agreement is void as a matter of law, and if such determination prevents any party from discharging its obligations under this agreement, this agreement may be terminated for breach at the option of the party not in breach.

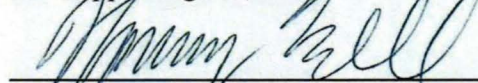
Adopted this 21st day of September, 2021.

Signed this 21st day of September, 2021.

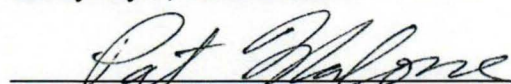
NORTH ALBANY COUNTY SERVICE DISTRICT
GOVERNING BODY

EXCUSED

Xanthippe Augerot, Chair

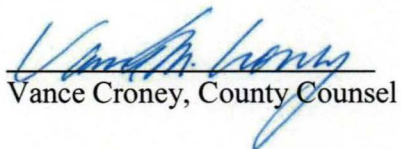


Nancy Wyse, Commissioner



Pat Malone, Commissioner

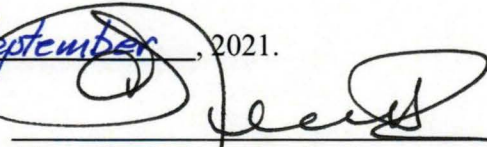
Approved as to form:



Vance Croney, County Counsel

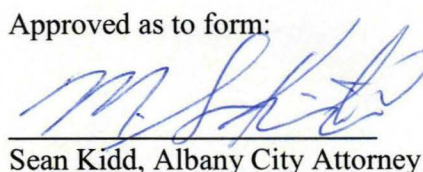
CITY OF ALBANY:

DATED this 24th day of September, 2021.

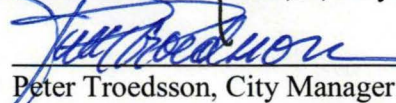


Alexander D. Johnson, II, Mayor

Approved as to form:



Sean Kidd, Albany City Attorney



Peter Troedsson, City Manager