

RESOLUTION NO. 3727

A RESOLUTION ADOPTING THE INTERGOVERNMENTAL SANITARY SEWER SERVICE AGREEMENT BETWEEN THE CITY OF ALBANY AND THE CITY OF MILLERSBURG.

WHEREAS, the City of Albany owns and operates a wastewater treatment and collection system; and

WHEREAS, the City of Millersburg owns a sanitary sewer collection system; and

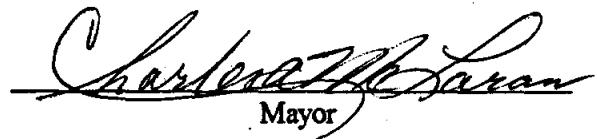
WHEREAS, the City of Millersburg has contracted with the City of Albany for wastewater treatment, operation and maintenance of Millersburg's public sanitary sewer facilities through the Albany-Millersburg Sanitary Sewer Service Agreement dated August 30, 1978; and

WHEREAS, the City of Millersburg and Albany agree that periodically the service agreement shall be reviewed and updated.


NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that the Intergovernmental Sanitary Sewer Service Agreement between the City of Albany and the City of Millersburg (attached hereto) is hereby adopted; and

BE IT FURTHER RESOLVED that the Intergovernmental Sanitary Sewer Service Agreement between the City of Albany and the City of Millersburg adopted by this resolution shall be effective January 20, 1997.

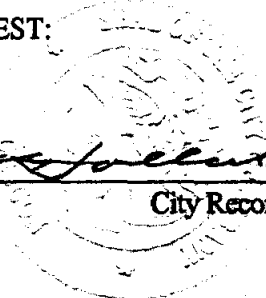
DATED THIS 18TH DAY OF DECEMBER 1996.


Mayor

ATTEST:



City Recorder





Intergovernmental Sanitary Sewer Service Agreement between the City of Albany and the City of Millersburg



This Agreement is made and entered into this 18 day of December 1996 between the City of Albany, hereinafter called *Albany*, and the City of Millersburg, hereinafter called *Millersburg*, both municipal corporations of the State of Oregon under the authority of the charters and laws applicable to each municipality, including ORS 190, hereinafter called *City*, for the purposes set forth hereinbelow.

This Agreement replaces and rescinds the Agreement dated August 30, 1978, and subsequent amendments, between Albany and Millersburg, whereby Albany contracted to provide secondary wastewater treatment of Millersburg's domestic wastewater, and operate and maintain Millersburg's public sanitary sewer system.

RECITALS

WHEREAS, Albany owns and operates a public wastewater treatment facility; and

WHEREAS, Millersburg owns a public sanitary sewer system and currently utilizes this wastewater treatment facility for secondary treatment of domestic wastewater; and

WHEREAS, Millersburg contracts with Albany to provide routine operation and maintenance of Millersburg's public sanitary sewer system; and

WHEREAS, both parties recognize the need to periodically review and update the Agreement for effective administration and operation; and

WHEREAS, both parties recognize Albany has implemented and enforces a pretreatment program to control industrial waste under 40 CFR Part 403; and

WHEREAS, both parties recognize the need to comply with the Oregon Department of Environmental Quality's requirements with respect to the form and substance of this Intergovernmental Agreement.

NOW, THEREFORE, the parties agree to the following terms and conditions:

SECTION I. PURPOSE AND INTENT OF AGREEMENT

- A. To provide for continued treatment and disposal of Millersburg's domestic wastewater.
- B. To provide for continued operation and maintenance of Millersburg's sanitary sewer collection system.
- C. To respond to customer inquiries, emergencies, and to provide regulatory coordination for operation and maintenance of Millersburg's sanitary sewer system.
- D. To comply with Albany's policies concerning extension of sanitary sewer service outside its corporate limits.
- E. To provide for fair and equitable recovery of the costs of providing facilities, treating and disposing of wastewater, and operating and maintaining Millersburg's public sanitary sewer system.

- F. To provide for recovery of past-due connection charges.
- G. To provide for fair and equitable cost sharing for capital improvements to Albany's Wastewater Treatment Plant.
- H. To provide for compliance with federal, state, and local requirements that are now applicable to both cities, and which may apply in the future.

SECTION II. DEFINITIONS

- A. **BIOCHEMICAL OXYGEN DEMAND**, hereinafter **BOD**: The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at a temperature of 20 degrees C, expressed in terms of weight and concentration, typically milligrams per liter (mg/L).
- B. **COMMERCIAL USER**: Any person who contributes, causes, or permits the contribution of wastewater into publicly-owned treatment works, which by nature of the services rendered is of a dissimilar volume or chemical makeup than that of a domestic user. Examples of commercial users include, but are not limited to, restaurants, grocery stores, and car washes.
- C. **DISCHARGE**: The discharge or introduction of pollutants into the municipal wastewater treatment system from any nondomestic source, regulated under Section 307 (b), (c), or (d) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq.
- D. **DOMESTIC USER**: Any person who contributes, causes, or permits the contribution of wastewater into publicly-owned treatment works that is of a similar volume and/or chemical makeup as that of a residential dwelling unit. Discharges from residential dwelling units typically include up to 100 gallons per capita per day, 0.20 pounds of BOD per capita per day, and 0.17 pounds of TSS per capita per day. Generally, there are only trace quantities of other organic or inorganic solids or chemicals.
- E. **ENGINEER**: For Albany, its Public Works Director or designee; for Millersburg, its designee.
- F. **EQUIVALENT CONNECTION NUMBER**, hereinafter **ECN**: The volume of wastewater discharged from a representative single-family dwelling in Albany. A volume of 6,089 gallons per month per ECN shall be used for purposes of this Agreement and for calculating sewer service user fees.
- G. **FEDERAL AND STATE REGULATIONS**: Federal and state regulations specifically incorporated herein by that reference: U.S. GOVERNMENT - 40 CFR 35, and 40 CFR 403; STATE OF OREGON - ORS 454.020, 454.030, 454.040, and 454.225.
- H. **INDUSTRIAL USER**: Any person who is a source of a discharge.
- I. **INDUSTRIAL WASTE**: Solid, liquid, or gaseous waste resulting from any industrial, manufacturing, trade, or business process, or from the development, recovery, or processing of natural resources.
- J. **INFILTRATION AND INFLOW**, hereinafter **I/I**: The total quantity of water entering the sanitary sewer system from direct and indirect storm water connections. Infiltration is groundwater entering the sewer system through various means, including defective pipes, pipe joints, sewer service connections, and manhole walls. Inflow is storm water or other clean water discharged to the sewer system through direct connections, including roof and area drains, foundation drains, cooling devices, manhole covers, catch basins, and cross connections from storm sewers.

- K. **NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**, hereinafter *NPDES permit*: The permit required of all dischargers to public waterways, setting forth the requirements and limitations on discharge, issued by, and on file with, DEQ.
- L. **PERSON**: Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity or their legal representative, agents, or assigns. The masculine gender shall include the feminine; the singular shall include the plural where indicated by the context.
- M. **PUBLIC SANITARY SEWER**: Sanitary sewers constructed in easements or rights-of-way that have been accepted as public facilities by Millersburg, and which, after the effective date of this Agreement, have been constructed in accordance with Albany's *Standard Construction Specifications*. Sanitary sewer service laterals from their connection at the public sanitary sewer to a user's plumbing facilities are private improvements. Repairs and maintenance of these laterals are specifically excluded from the scope of services provided through this Agreement.
- N. **SERVICE LATERAL**: Any pipe between a public sanitary sewer, at the location where it connects to the public sewer, and the user's plumbing facilities.
- O. **STATE DEPARTMENT OF ENVIRONMENTAL QUALITY**, hereinafter *DEQ*: The state agency responsible for issuing and enforcing NPDES permits.
- P. **TOTAL SUSPENDED SOLIDS**, hereinafter *TSS*: The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquids and that is removable by laboratory filtering.
- Q. **WASTEWATER TREATMENT PLANT**: Albany's Wastewater Treatment Plant.
- R. **WET WEATHER FLOW**: The volume of sanitary sewage, typically measured in million gallons, for the period between October 1 of one year through March 31 of the following year.

SECTION III. LIMITATIONS ON SEWAGE DISCHARGE

- A. **DOMESTIC AND COMMERCIAL WASTEWATER ONLY**: There shall be no industrial wastewater discharged to Millersburg's public sanitary sewer system.

Millersburg and Albany have begun a cooperative evaluation of the financial impact and potential cost of service for Albany's acceptance of limited industrial discharges from Millersburg. This Agreement continues Albany's prohibition of industrial wastewater discharges, subject to an exception when requested by Millersburg and approved by Albany.

The process for acceptance of limited industrial wastewater is an interim measure pending completion of the aforementioned study, and full consideration of related policy issues by both cities. Albany's exception process that allows Millersburg to request limited industrial discharges shall expire twenty-four (24) months after the effective date of this Agreement. If this Agreement is not modified prior to expiration of this interim period, the exception process shall no longer exist and Albany shall not grant any exceptions for industrial wastewater discharges.

- B. **PERMIT/OPERATIONAL LIMITATIONS**: Millersburg shall not approve discharge of sewage, including sanitary sewage and *II*, to the Wastewater Treatment Plant that will cause the plant to exceed the limitations in Albany's NPDES permit, nor shall such sewage discharge be detrimental to efficient operations, interfere with the economical disposal of sewage sludge, or in any way cause the Wastewater Treatment Plant to be inoperable.

- C. **SERVICE AREA:** Millersburg shall not allow sewage into its sanitary sewer system from properties outside its corporate limits.
- D. **ADOPTION OF ALBANY SEWER USE ORDINANCE:** Albany Ordinance No. 5016, dated November 18, 1992, as amended and insofar as applicable herein, and not in conflict with the provisions of the Agreement, are hereby incorporated by reference and made a part of this Agreement.
- E. **PROTECTION OF WASTEWATER TREATMENT PLANT:** If Millersburg approves connection from an industry needing an industrial waste discharge permit without amending this Agreement or becomes aware of an industrial connection made without Millersburg's approval and does not require an industrial waste discharge permit or fails to prevent an industrial user subject to permit requirements from commencing or continuing to discharge to its system, Millersburg shall be liable for any damages to Albany's wastewater system caused by discharges from that industry, and any additional treatment and disposal costs, and/or regulatory fines and enforcement actions incurred because of that discharge. Upon becoming aware that such a connection exists, Millersburg shall immediately notify Albany and disconnect the industry.

SECTION IV. INDUSTRIAL PRETREATMENT

- A. **REQUIREMENT FOR INDUSTRIAL PRETREATMENT PROGRAM:** Pursuant to ORS 454.020, it is recognized that the parties hereto are subject to and bound by changes and additional requirements of governmental agencies having jurisdiction over the subject matter of this Agreement, including Albany's NPDES permit, affecting the terms herein. Albany, as operator of the Wastewater Treatment Plant and holder of the NPDES permit, is required by the DEQ and the U.S. Environmental Protection Agency, hereinafter EPA, to provide an industrial waste pretreatment program.
- B. **DELEGATION OF PRETREATMENT RESPONSIBILITY AND AUTHORITY TO ALBANY:** In compliance with DEQ and EPA pretreatment regulations, Millersburg hereby agrees that Albany's agents and employees are deemed authorized employees and engineers for Millersburg for purposes of entry and inspection as permitted under Millersburg Ordinance No. 79, adopted April 13, 1993, as amended. Millersburg agrees that Albany shall have legal authority and responsibility for implementing the pretreatment program as described in Albany's NPDES permit for industries located in Millersburg that have the potential of impacting the Wastewater Treatment Plant.

Any authorized officer or employee of Albany is granted the right to enter property or inspect industries located within Millersburg's jurisdiction in accordance with the provisions of Albany's most recent Sewer Use Ordinance. This includes the right to sample, measure, or test waste discharges from outlying industries. Millersburg further agrees to enact such ordinances as may be necessary to give effect to this Agreement.
- C. **MINIMUM PRETREATMENT STANDARDS:** Millersburg agrees to adopt, and update as needed, a sewer use ordinance that is no less stringent and as broad in scope as Albany's Sewer Use Ordinance. Whenever Albany amends its sewer use ordinance, it will immediately notify Millersburg. For purposes of this Agreement, immediate notification means forwarding a copy of any amendments within five (5) business days of enactment thereof. Millersburg agrees to enact amendments at least as stringent as those adopted by Albany within sixty (60) business days of receiving notice unless Albany declares an emergency. If Albany declares an emergency, Millersburg shall enact amendments to their Sewer Use Ordinance within ten (10) business days.
- D. **PERIODIC REVIEW:** Albany and Millersburg agree to periodically review their respective ordinances and jointly adopt equivalent amendments to their respective ordinances when deemed necessary for effective administration and operation of the pretreatment program. Such a review shall be conducted not less than once every five (5) years; however, either party, or DEQ, may request a joint review whenever deemed necessary.

- E. PUBLICATION OF LOCAL LIMITS:** Albany agrees to publish local limits for Millersburg concurrent with Albany's publication of local limits and to include the pollutant parameters that are at least as stringent as the local limits published for Albany. When revisions or additions are made to Albany's local limits, Albany will immediately notify Millersburg. For purposes of this Agreement, immediate notification means forwarding a copy of any revisions or additions to the local limits within five (5) business days of enactment. Millersburg agrees to adopt revisions or additions made to Albany's local limits within sixty (60) business days of receiving written notice.
- F. DESIGNATION/ACCEPTANCE OF ENFORCEMENT AUTHORITY:** Millersburg hereby designates Albany as its agent for purposes of implementation and enforcement of Millersburg's ordinance with users located in Millersburg. Albany hereby accepts the designation as Millersburg's agent for purposes of implementation and enforcement of Millersburg's Ordinance and Millersburg agrees to adopt this Albany's Ordinance language so as to make all Ordinance provisions applicable in Millersburg.
- G. TECHNICAL/ADMINISTRATIVE DUTIES:** Albany, on behalf of and as agent for Millersburg, agrees to perform technical and administrative duties necessary to implement and enforce Millersburg's ordinance, including, but not limited to, the following: (1) updating industrial waste survey; (2) providing technical services, such as sampling and analysis; (3) permitting; (4) conducting inspection and compliance monitoring; and (5) performing enforcement activities. In addition, Albany is authorized, as an agent of Millersburg, to stop or prevent any discharge which presents or may present an imminent danger to the health and welfare of humans, which reasonably appears to threaten the environment, or which threatens to interfere with the operation of the Wastewater Treatment Plant.
- H. COSTS INCURRED FOR PRETREATMENT PROGRAM:** Albany shall bill Millersburg for extraordinary costs above and beyond pretreatment services provided in Section X-3. of this Agreement. Examples of extraordinary costs outside the scope of services included in this Agreement include, but are not limited to, investigation of plant upsets or discharge violations from Millersburg, additional sampling frequency, and extraordinary inspection and enforcement actions. Billing for these costs shall be separate from, and in addition to, quarterly sewer user fees.
- I. ENFORCEMENT ACTION:** In the event Millersburg does not carry out full enforcement of the federal pretreatment regulations at 40 CFR 403.8, Albany is authorized to take such enforcement action as it deems appropriate directly against offending dischargers located within Millersburg pursuant to 40 CFR 403.8(f)(1)(vi). In the event Albany proposes to take such enforcement action, it shall notify Millersburg in writing and shall seek agreement with Millersburg concerning the nature of the violation and the appropriate enforcement action. In the case of an emergency, as determined by Albany, this written notice requirement shall be waived, but actual notice shall be given as soon as practicable and followed by written confirmation. If agreement can be reached between Albany and Millersburg, then Albany will take enforcement action under Millersburg's authority as an agent of Millersburg. If such an agreement cannot be reached, then Albany, pursuant to this Agreement, is authorized to take enforcement action in its own name with all authority which Millersburg can grant pursuant to ORS 190, it being the intent of this paragraph to authorize Albany to take enforcement action directly against offending dischargers located within Millersburg, even if Millersburg is unwilling to do so.

SECTION V. INFILTRATION AND INFLOW

- A. INFILTRATION AND INFLOW (I/I) REDUCTION:** Albany and Millersburg agree to continue to work cooperatively toward reduction of I/I entering their respective sanitary sewer systems to allow maximum utilization of the Wastewater Treatment Plant's design capacity and minimize the extent and duration of overflows.

- B. **NPDES REQUIREMENTS:** Millersburg agrees to meet I/I reduction requirements as identified in Albany's NPDES permit, including compliance with enforcement actions and/or orders. I/I shall include, but not be limited to, funding costs for source detection, separation of storm water from the sanitary sewer system, improvements to Millersburg's sanitary sewer collection system, and adoption of ordinances and policies needed to effectively identify and reduce I/I.

SECTION VI. CONNECTION FEES AND SEWER SYSTEMS DEVELOPMENT CHARGES (SDC)

- A. **PAST DUE CONNECTION CHARGES:** The August 30, 1978, Intergovernmental Agreement between Albany and Millersburg included a connection fee of \$125,430 based on a projected wastewater volume of 2,250,000 gallons per month. The Agreement also provided for additional connection charges as average monthly discharges exceeded this volume. These additional fees were to be paid at the rate charged Albany users for the Wastewater Treatment Plant element of the connection fee.

Additional connection fees have not been charged as provided in the August 30, 1978, Agreement. Albany and Millersburg agree that additional connection fees are due pursuant to the initial Intergovernmental Agreement. Based on Millersburg's historic use and incremental increases in Albany's sewer connection/Sewer System's Development Charge, hereinafter SDC fee, Albany and Millersburg agree that the past due amount for connection charges through 1991 is Sixty-eight Thousand Four Hundred Fifty-five Dollars (\$68,455). Millersburg agrees to pay this past due connection charge as a lump sum payment within 30 calendar days of execution of this Agreement.

Millersburg and Albany acknowledge that wet weather flow increases during calendar years 1994 and 1995 are substantially above historic flows. A cooperative effort involving flow monitoring and smoke testing of Millersburg's public sanitary sewer collection system is in progress to identify and reduce the recent wet weather flow increases. Albany and Millersburg agree to defer past due SDC charges for calendar years 1994 and 1995 until completion of successful cost-sharing negotiations for the upcoming capital improvements at the Wastewater Treatment Plant, or by July 1, 2001, whichever comes first.

If all issues regarding past due SDC fees for calendar years 1994 and 1995 are not resolved through cost sharing negotiations for capital improvements to the Wastewater Treatment Plant, past due SDC fees for these years shall be based on Millersburg's average monthly wet weather discharge for the period between October 1, 1998, through March 31, 2001. Millersburg shall pay additional past due SDC charges for ECN's above the 532 ECN's paid through 1991. Payment shall be as a lump sum based on Albany's Sewer SDC rates in effect on July 1, 2001, and shall be due within 30 calendar days of Albany's notice of additional past due SDC fees.

- B. **PERMITTING:** Albany and Millersburg agree that Millersburg will issue permits for connection of private sanitary sewers to Millersburg's public sewer system. Millersburg shall coordinate scheduling of inspection of service tap connections with Albany, and shall provide sufficient records to include connection locations on Albany's Geographic Information System. Albany will issue Site Improvement (SI) permits for construction of all public sanitary sewers following the effective date of this Agreement, as further discussed in Section VIII and shall notify Millersburg upon final acceptance of these facilities. Millersburg shall not issue connection permits for public sewers constructed through the SI permit process until Albany accepts these facilities.
- C. **MILLERSBURG CONNECTION FEE:** Nothing herein shall prohibit Millersburg from charging a connection fee to new customers in Millersburg.

SECTION VII. CAPITAL IMPROVEMENTS TO ALBANY'S WASTEWATER TREATMENT PLANT

- A. **EXPANSION OF TREATMENT PLANT CAPACITY:** Albany shall periodically review the volume and strength of wastewater received from Millersburg, and shall project and notify Millersburg when additional capacity related improvements will be required.
- B. **COST SHARING:** Millersburg shall share in the cost of future capital improvements to the Wastewater Treatment Plant, including biosolids storage and distribution facilities, which provide additional capacity dedicated for Millersburg's use. Cost sharing shall include, but not be limited to, costs for process improvements, including hydraulic, BOD, TSS, and solids handling capacity, regulatory improvements, and related work. The estimated cost of improvements and policy decisions concerning the future level of service Albany will provide Millersburg are unknown at the time this Agreement is executed. Albany and Millersburg agree to share in future capital projects based on the degree of benefit each community receives and to enter into good faith negotiations as cost and level of service decisions are made.

SECTION VIII. CONSTRUCTION OF PUBLIC SANITARY SEWERS

- A. **SITE IMPROVEMENT PERMIT REQUIRED:** Millersburg agrees to utilize Albany's Site Improvement (SI) permit process for construction of public sanitary sewers. Construction of public sewers under private contract in Millersburg shall be subject to SI permit fees equal to those charged in Albany for similar plan review and inspection services. Following final acceptance, Albany agrees to provide Millersburg with copies of record drawings of these facilities.

Construction of public sewers funded by Millersburg shall be exempt from all SI permit fees. The SI process will be modified for Millersburg sponsored projects only as described herein. Albany shall not require copies of engineering services agreements. In lieu of providing a copy of engineering agreements with each SI permit, Millersburg agrees to contract for engineering services for design and construction inspection of all public sanitary sewer facilities sponsored by Millersburg. The scope of these engineering services shall be sufficient to ensure facilities are constructed in accordance with approved plans and the current edition of Albany's *Standard Construction Specifications*. Millersburg agrees to require public liability and property damage insurance, as more fully specified in Albany's *Standard Construction Specifications*, and agrees that Albany shall be named as an additional insured party. Millersburg agrees Albany shall be named in the performance and payment bond furnished by contractor and that such bond shall cover the warranty period as more fully specified in Albany's *Standard Construction Specifications*. Millersburg and Albany agree that fully executed easements and rights-of-way documents will be required as a condition of final acceptance of a facility. Millersburg and Albany further agree that connections to a public sanitary sewer shall not be permitted until a facility is complete in all respects and has been accepted by both cities.

Sanitary sewer facilities sponsored by Millersburg shall meet all other standard SI permit requirements for plan review and approval, construction procedures, notification, testing and related requirements as more fully described in the SI permit and Albany's *Standard Construction Specifications*.

- B. **CONSTRUCTION STANDARDS:** Millersburg agrees that all public sanitary sewer facilities will be constructed in accordance with the edition of Albany's *Standard Construction Specifications* in effect at the time of construction.
- C. **VIDEO INSPECTION:** Albany agrees to provide video inspection services for acceptance inspection of new public sanitary sewers at the completion of construction and at the conclusion of a one (1)- year warranty period. Construction of new public sewers by Millersburg shall be exempt from inspection fees. Construction of public sewers by private development shall pay video inspection fees equal to those charged for acceptance and warranty inspection in Albany.

- D. **LIFT STATIONS:** Millersburg agrees to construct future lift stations in accordance with Albany's standards. These standards shall include, but not be limited to, plan review prior to submission to DEQ, and provision of motors, pumps, impellers, and telemetry equipment.

SECTION IX. USER FEES AND BILLING

- A. **USER FEES:** Albany shall charge, and Millersburg shall pay, sanitary sewer user fees for wastewater treatment services, including operation and maintenance of Millersburg's public sanitary sewer system, on a quarterly basis. The user fee shall be comprised of four (4) parts: a *fixed fee*, a *variable fee*, a *debt service fee*, and a *surcharge* for sewer service outside Albany city limits as defined herein below:

A *fixed fee* shall be charged based on a prorated formula relating Millersburg's wastewater volume to wastewater volume from an equivalent dwelling unit, as defined herein. The total number of equivalent connections (ECN's) shall be multiplied by the sanitary sewer fixed-fee rate as established or amended by Albany City Council. The fixed fee shall be determined by the following formula:

$$\text{Fixed Fee} = \frac{(\text{actual quarter's flow}) * (\text{fixed fee residential rate})}{(6,089 \text{ gallons})}$$

A *variable fee* as established or amended by Albany City Council shall be multiplied by the total volume of wastewater discharged to the Wastewater Treatment Plant. The variable fee shall be determined by the following formula:

$$\text{Variable Fee} = \frac{(\text{actual quarter's flow}) * (\text{variable fee residential rate})}{(7.48) * (100)}$$

surcharge for providing sanitary sewer service beyond Albany's corporate limits shall be charged. The surcharge shall be applied to the sum of the quarterly *fixed* and *variable* fees, as established or amended in Albany Resolution No. 3649 dated July 1, 1996. The surcharge shall be calculated as shown hereinbelow, based on the current surcharge rate of fifty-percent (50%):

$$\text{Surcharge} = 0.5 * [\text{Fixed Fee} + \text{Variable Fee}]$$

A maximum of one-third of the surcharge fees collected during any fiscal year shall be available to Millersburg during the subsequent fiscal year for non-routine maintenance and repairs. Millersburg may request reimbursement for non-routine operation and maintenance expenses, as defined herein, or may request this revenue be applied as a credit for non-routine services provided by Albany. The request shall be in writing and shall include an itemized summary of expenses.

Millersburg and Albany agree that the maximum amount of surcharge revenue available for Millersburg's use in funding non-routine maintenance and repairs shall be based solely and entirely on the surcharge revenue paid Albany during the preceding fiscal year. At the conclusion of each fiscal year all unspent surcharge revenue available for non-routine maintenance shall not be carried forward or made available for Millersburg's use during successive fiscal years.

A *debt service fee* as established or amended by Albany City Council shall be charged for Millersburg's participation in capital improvements to the Wastewater Treatment Plant subject to mutual agreement by Millersburg and Albany to finance Millersburg's share of capital expenses to the Wastewater Treatment Plant through user fees.

The total quarterly user fee (hereinafter user fee) shall be the sum of the fixed fee, variable fee, surcharge, and debt service fee as shown hereinbelow:

$$\text{User Fee} = \text{Fixed Fee} + \text{Variable Fee} + \text{Surcharge} + \text{Debt Service Fee}$$

Quarterly pump run time from the Wah Chang and Burkhart Lift stations shall be used to estimate the actual volume of wastewater received.

- B. PAYMENT: Albany shall bill Millersburg on a quarterly basis, and Millersburg shall pay Albany within thirty (30) calendar days of billing. Interest at a rate of 9 percent (9%) per annum shall accrue on any amount not paid within thirty (30) calendar days.

SECTION X. OPERATION AND MAINTENANCE

- A. SERVICES PROVIDED: Albany shall provide routine maintenance of Millersburg's public sanitary sewer collection system and lift stations with the same priority and subject to the same level of service provided Albany. The maintenance frequencies included herein for inspection, cleaning, and related maintenance of Millersburg's wastewater system are intended to coincide with the level of service provided Albany and may change to ensure similar service is provided to both communities. Albany shall provide Millersburg with a written summary of inspection and maintenance activities on a quarterly basis, beginning April 1997 and each quarter thereafter. The scope of routine maintenance is defined hereinbelow.

1. SANITARY SEWER COLLECTION SYSTEM:

- a. INSPECT AND CLEAN: Albany shall inspect and clean Millersburg's manholes and public sanitary sewers at least every five years, similar to Albany's preventive maintenance program.
- b. UTILITY LOCATES: Albany shall provide utility location services for Millersburg's public sanitary sewer system to a comparable level of service and response time provided in Albany.
- c. EMERGENCY RESPONSE: Albany shall respond to and remove blockages in Millersburg's public sanitary sewer collection system, unless removal of blockages or obstructions requires excavation. Blockages, requiring excavation and/or pipeline repairs, will be corrected as provided in SECTION XI of this Agreement.
- d. VIDEO INSPECTION: Albany shall provide acceptance and warranty video inspection of new public sanitary sewers constructed by Millersburg. For public sanitary sewers constructed under private contract in Millersburg, Albany shall charge inspection fees at rates equal those charged within Albany for similar services.
- e. AIR RELIEF VALVE INSPECTION: Albany shall inspect all air relief valves on force mains annually and maintain records of inspection, repair, and maintenance.
- f. INSPECTION OF CONNECTIONS TO PUBLIC SEWER SYSTEM: Millersburg shall notify Albany a minimum of three (3) business days in advance of a new connection to a public sanitary sewer. Albany shall inspect new connections in accordance with Albany's *Standard Construction Specifications*.
- g. WASTEWATER ANALYSIS: Albany shall sample and analyze wastewater discharged to the Wastewater Treatment Plant from Millersburg's sewer system on a monthly basis. Samples shall be taken as grab samples from Millersburg's trunk sewer.

- h. **CUSTOMER RESPONSE:** Albany shall provide customer services, including responding to customer inquiries and service concerns.

2. SANITARY SEWER LIFT STATIONS:

- a. **ROUTINE INSPECTION:** Albany shall inspect Millersburg's lift stations on a weekly basis and provide routine maintenance as needed. Routine maintenance shall include regular inspection of telemetry equipment, pump and motor controls, cooling, lubrication, and ventilation equipment. Albany shall maintain a log of all inspection findings and weekly pump run times.
- b. **MONITORING:** Albany shall monitor wet well alarms, pump and motor cycling, and related information through telemetry between each lift station and the Wastewater Treatment Plant.
- c. **EMERGENCY MAINTENANCE:** Albany shall respond to emergencies at Millersburg's lift stations, complete emergency repairs as defined in Section XI-A of this Agreement, and notify Millersburg of any recommended improvements and/or maintenance needs that exceed routine repairs.
- d. **WET WELL CLEANING:** Albany shall spray wash wet wells for each of Millersburg's lift station's two (2) times annually.
- e. **REGULATORY COORDINATION AND LIABILITY:** Albany shall report mechanical power or other problems resulting in sewage overflows to DEQ. Albany shall maintain records of overflow events and be responsible for public notification as required. Albany shall not assume liability, including fines and/or other regulatory enforcement actions imposed by DEQ or third parties for overflows from Millersburg's lift stations or public sanitary sewer system that result from actions or events beyond Albany's control.
- f. **STATE AND FEDERAL STANDARDS:** Albany shall maintain and operate Millersburg's public sanitary sewer system in accordance with state and federal standards and Albany's NPDES permit.

3. INDUSTRIAL PRETREATMENT SERVICES

- a. **APPLICABILITY:** The services outlined herein below addresses industrial pretreatment services Albany will provide Millersburg should Albany and Millersburg amend this Agreement to allow discharge of industrial wastewater to Millersburg's sanitary sewer system.
- b. **PERMIT:** Albany will issue wastewater discharge permits to significant industrial users. Significant industrial users will be determined based on Albany's user classification and federal categorical pretreatment standards. Permitting will include plan review of pretreatment processes, flow monitoring and sampling equipment, and related facilities. Permits will be issued on a four (4)-year cycle.
- c. **SAMPLING:** Albany will read wastewater flow meters daily and take random samples of effluent at least two (2) times per month. Effluent samples will be taken as needed for industries classified high volume commercial users.
- d. **INSPECTION:** Albany will inspect pretreatment process equipment, storage and containment areas, and related pretreatment facilities at least annually. Written inspection reports and, if needed, related recommendations or enforcement actions will follow each inspection. Albany will also review monthly compliance reports, including sample data, continuous pH charts (if required) for compliance with permit limits.

- e. **ENFORCEMENT:** Albany will issue notices of violation and pursue other remedies as may be required for violation of waste discharge permits in accordance with Albany's Sewer Use Ordinance.

B. SERVICES EXCLUDED:

1. **NON-ROUTINE MAINTENANCE:** Repair and/or replacement of public sanitary sewers and equipment, except as specifically provided within this Agreement, are specifically excluded from the scope of services Albany will provide.
2. **SANITARY SEWER REPAIRS:** All costs related to trench excavation, repair of public sanitary sewers, manholes, and related appurtenances are specifically excluded from the scope of services Albany will provide.
3. **LIFT STATION REPAIRS:** All costs related to replacement or rehabilitation of lift station equipment, including, but not limited to, pumps, impellers, seals, bearings, motors, controls, telemetry equipment, and related appurtenances, are specifically excluded from the scope of services Albany will provide.
4. **INFILTRATION AND INFLOW (I/I):** All work related to identification and removal of I/I, including, but not limited to, flow monitoring, smoke testing, dye testing, manhole and sanitary sewer testing, sealing and repair of defects to reduce the amount of I/I entering Millersburg's sanitary sewer facilities, are specifically excluded from the scope of services Albany will provide.
5. **POWER AND WATER COSTS:** All power and water expenses for lift stations shall be Millersburg's responsibility and are specifically excluded from the scope of services Albany will provide.
6. **DESIGN AND ADMINISTRATION:** Design, planning, project administration, review, approval, inspection, and/or acceptance of any new public sanitary sewer, other than those review and acceptance procedures included with the SI permit process, are specifically excluded from the scope of services Albany will provide.
7. **UTILITY RELOCATES:** Relocation of any public sanitary sewers, manholes, cleanouts, lift stations, force mains, and/or services are specifically excluded from the scope of services Albany will provide.
8. **LIMITATION OF SCOPE:** Albany shall not provide any services or assume any responsibilities not expressly delineated in this Agreement.

- C. **ADDITIONAL AGREEMENTS:** The parties agree that they will enter into separate new agreements, when needed, whereby Albany may supply staff, equipment, and materials for non-routine maintenance and repairs, such as pump station expansion, sanitary sewer excavation and repair, I/I identification and reduction, and pump and impeller replacement. Nothing shall prevent Albany and Millersburg from agreeing to perform any of the above excluded services provided the added services and compensation are mutually agreed upon.

SECTION XI. EMERGENCY RESPONSE

- A. **DELEGATION OF EMERGENCY RESPONSE AUTHORITY:** Millersburg authorizes Albany to act as its agent in responding to emergencies which reasonably presents, or may present in Albany's judgement, an imminent danger to public health and welfare, or that threatens the environment. Albany shall notify Millersburg of an emergency by telephone within 24 hours and in writing within ten (10) business days. Such notice will include a description of the emergency, all actions taken on Millersburg's behalf, any additional actions required, and an estimated cost of Albany's efforts to resolve emergency. Millersburg authorizes Albany to take immediate action to directly remedy emergencies and shall be responsible for staff, material, equipment, and other costs that are directly attributable to address the emergency, and which are above and

beyond the scope of services as defined herein.

SECTION XII. RELEASE OF CLAIM

- A. Although Albany may provide additional sewage treatment capacity, subject to mutual agreement and cost sharing as provided herein, Albany shall not be liable for, and Millersburg shall indemnify Albany from, any claims for not providing any future capacity and/or any delay in providing additional capacity. Albany shall not be liable for any claims for not providing sewer service at less than the capacities agreed to herein, should the cause for diminished or denied service be the result of:
1. Any labor dispute or strike.
 2. Any act of God or other force majeure.
 3. Any change in federal or state law that may prohibit, or in any way limit, Albany's existing capacity or ability to provide future capacity.
 4. Any other occurrence which may prohibit Albany from providing current or future capacity, which is the result of any action beyond Albany's control.

SECTION XIII. TERM, EFFECTIVE DATE, MODIFYING AGREEMENT

- A. This Agreement shall be effective January 20, 1997, and shall continue in full force and effect for an indefinite period of time. The Agreement may be modified by agreement of both parties. Albany and Millersburg retain the right to unilaterally terminate this Agreement. Either party shall provide the other with a minimum of three (3) years' advance written notice prior to terminating the Agreement; however, if Millersburg desires to terminate this Agreement, Millersburg shall pay its share of capital improvement expenses that Albany is committed to, and that Millersburg has not fully paid for.

SECTION XIV. SEVERABILITY

- A. In the event any provisions of this Agreement shall be held impossible, invalid, or unenforceable, the remaining provisions shall be valid and binding upon the parties hereto. One or more waivers by either party of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach by the other party. Both parties have fully participated in negotiating and rewriting this Agreement; therefore, it shall not be construed against the party preparing it, but shall be construed as if both parties prepared it.

SECTION XV. HEIRS AND ASSIGNEES

- A. This Agreement is binding to the heirs, successors, and assigns of the parties hereto, and is not to be assigned by either party without first obtaining written consent of the other. No assignment of this Agreement shall be effective until the Assignee assumes in writing the obligations of the assigning party and delivers such written assumption to the other party in this Agreement.

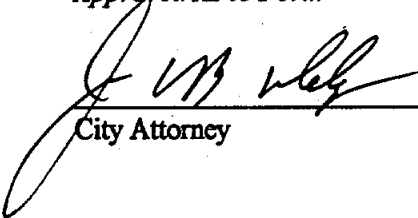
DATED this 18 day of December 1996.

CITY OF ALBANY




City Manager

Approved As to Form



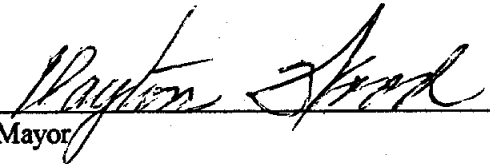
City Attorney

ATTEST:



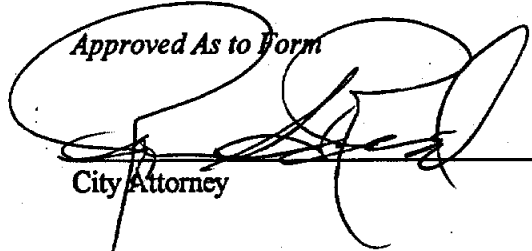
City Recorder

CITY OF MILLERSBURG



Mayor

Approved As to Form



City Attorney

ATTEST:



City Recorder