

RESOLUTION NO. 4735

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF ALBANY TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF ALBANY AND THE CITY OF MILLERSBURG TO PLAN, DESIGN, PERMIT, CONSTRUCT, OPERATE, AND MAINTAIN A JOINT WATER SUPPLY SYSTEM THAT WILL PROVIDE TREATED DOMESTIC WATER TO MEET THE NEEDS OF BOTH COMMUNITIES.

WHEREAS, the Mayors and joint Councils of Albany and Millersburg have been working together to insure adequacy of water supply for the projected buildout populations of both cities; and

WHEREAS, a joint water treatment and supply facility has been proposed to meet the projected needs; and

WHEREAS, the joint facility maybe constructed in phases; and

WHEREAS, an intergovernmental agreement is proposed to clearly define the roles, duties, and responsibilities of each city in establishing the joint water supply facility; and

WHEREAS, the agreement is subject to the understanding that it may be amended, as needed and mutually agreeable, to reflect the information and conditions that evolve as the joint water supply facilities are constructed and operated; and

WHEREAS, each party is a municipal corporation under the laws of the State of Oregon that plans and provides essential public services such as potable water for present and future users; and

WHEREAS, the development of a new, high-quality water supply is a high priority of both Albany and Millersburg to meet the demands of their communities. To meet their combined full buildout maximum day demands, the communities need an estimated 46 million gallons per day (mgd) of water supply; and

WHEREAS, Albany needs to expand its water supply capacity by the year 2008, even if Millersburg is not a water purchaser, and Millersburg desires to provide its own water supply to their community as soon as possible; and

WHEREAS, Albany has a water right and water use permit, and Millersburg has a water use permit, issued by the State of Oregon, acting by and through the Oregon Water Resources Department (OWRD) and the cities will utilize these water rights and permits to meet the combined needs of both communities; and

WHEREAS, both Albany and Millersburg have acquired land and easements that will be utilized to implement a joint water supply system; and

WHEREAS, Albany currently owns and operates a water treatment plant (Westside Supply), transmission, storage, and distribution facilities, and Millersburg currently owns and operates a water transmission and distribution system. These existing facilities will remain separate from the joint water supply system; and

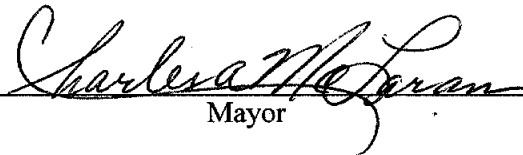
WHEREAS, Millersburg currently contracts with Albany for water supply, operation, and maintenance, through an agreement, which will remain in full force and effect until Phase 1 of the joint water supply project is operational. The current Operations and Maintenance agreement will be reviewed by the Management Committee, as defined in the intergovernmental agreement, with the intent to incorporate any appropriate terms into this agreement. The intent is to terminate the existing Operations and Maintenance agreement after Phase 1 of the joint project is fully operational; and

WHEREAS, Millersburg had invested efforts toward the siting, engineering, permitting, and construction of separate water supply facilities to meet their needs. These efforts will be discontinued in favor of the joint water supply project; and

WHEREAS, the parties agree that the opportunity to cooperate in the planning, design, permitting, construction, operation, maintenance, and cost sharing of new joint water supply facilities (Eastside Supply) is mutually beneficial and that such agreements are authorized under the provisions of ORS Chapter 190, and being fully advised.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately upon passage by the Council and approval by the Mayor.

DATED AND EFFECTIVE THIS 24TH DAY OF JULY 2002.



Mayor

ATTEST:



City Recorder

INTERGOVERNMENTAL AGREEMENT

This Agreement is made and entered into this 25 day of July 2002 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 purpose of this agreement between Albany and Millersburg (parties), is to set forth the terms and conditions whereby the cities agree to plan, design, permit, construct, operate, and maintain a joint water supply system that will provide treated water to meet the needs of both communities. The joint water supply system will be expanded in phases to meet the growing needs of each community. This agreement is subject to the understanding that it may be amended, as needed and mutually agreeable, to reflect the information and conditions that evolve as the joint water supply facilities are constructed and operated.

WITNESSETH

WHEREAS, each party is a municipal corporation under the laws of the State of Oregon that plans and provides essential public services such as potable water for present and future users; and

WHEREAS, the development of a new, high-quality water supply is a high priority of both Albany and Millersburg to meet the demands of their communities. To meet their combined full buildout maximum day demands, the communities need an estimated 46 million gallons per day (mgd) of water supply; and

WHEREAS, Albany needs to expand its water supply capacity by the year 2008, even if Millersburg is not a water purchaser, and Millersburg desires to provide its own water supply to their community as soon as possible; and

WHEREAS, Albany has a water right and water use permit, and Millersburg has a water use permit, issued by the State of Oregon, acting by and through the Oregon Water Resources Department (OWRD) and the cities will utilize these water rights and permits to meet the combined needs of both communities; and

WHEREAS, both Albany and Millersburg have acquired land and easements that will be utilized to implement a joint water supply system; and

WHEREAS, Albany currently owns and operates a water treatment plant (Westside Supply), transmission, storage, and distribution facilities, and Millersburg currently owns and operates a water transmission and distribution system. These existing facilities will remain separate from the joint water supply system; and

WHEREAS, Millersburg currently contracts with Albany for water supply, operation, and maintenance, through an agreement, which will remain in full force and effect until Phase 1 of the joint water supply project is operational. The current Operations and Maintenance agreement will be reviewed by the Management Committee with the intent to incorporate any

appropriate terms into this agreement. The intent is to terminate the existing Operations and Maintenance agreement after Phase 1 of the joint project is fully operational; and

WHEREAS, Millersburg had invested efforts toward the siting, engineering, permitting, and construction of separate water supply facilities to meet their needs. These efforts will be discontinued in favor of the joint water supply project; and

WHEREAS, the parties agree that the opportunity to cooperate in the planning, design, permitting, construction, operation, maintenance, and cost sharing of new joint water supply facilities (Eastside Supply) is mutually beneficial and that such agreements are authorized under the provisions of ORS Chapter 190, and being fully advised.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

1. Incorporation of Recitals. The recitals set forth above are incorporated in this Agreement as an expression of the intent of the parties and should be considered as an aid to interpret the Agreement.

2. Authority of Parties. The parties hereby declare that they have the authority to enter into this Agreement pursuant to their applicable Charter and Oregon Revised Statutes, Sections 190.003-190.030.

3. Joint Water Supply System Description. The joint water supply system will include facilities constructed over time that will have the capacity to meet the long-term needs of both communities. Exhibit 1, attached hereto and incorporated by reference, shows the general layout of the joint water supply system facilities. The joint water supply system facilities will be sized to provide 26 million gallons per day (mgd) of total treated water capacity, with 20 mgd for Albany and 6 mgd for Millersburg. The following describes the general scope of the facilities that will make up the joint water supply system:

- a) **Raw Water Intake (RWI) and Pipeline.** The joint raw water intake will be located at the Albany site (Exhibit 2) utilizing a bottom intake design. Final intake design may be revised based on comments from applicable Federal and State regulatory agencies, such as National Marine Fisheries Services and US Army Corps of Engineers. The raw water gravity pipeline will utilize the same routing and easements acquired for Millersburg's separate project (Exhibit 2).
- b) **Raw Water Pump Station (RWPS) and Pressure Main.** The joint raw water pump station will be located on a portion of the Albany property (Exhibit 2), above the 100-year floodplain. Normal access to the pump station will be from Mountain View Place utilizing the easements acquired by Millersburg. Emergency access will be provided on a gravel roadway following the raw water pressure main route on the Albany property. The raw water pressure main will follow a route through the Albany property, along Scrael Hill Road to Teddy Avenue, then along Teddy

Avenue to an easement acquired by Millersburg, then along the easement to the Scrael Hill water treatment plant site.

- c) **Water Treatment Plant (WTP).** The joint water treatment plant will be located on the 7.4-acre site on Scrael Hill acquired by Millersburg (Exhibit 3). The water treatment plant will utilize a submerged membrane treatment process, with associated ancillary facilities to produce treated water that meets federal and state drinking water standards. The water treatment plant will be designed and constructed in a way that provides for cost-effective and efficient capacity-expansion increments to meet the increasing needs of both communities.
- d) **Finished Water Storage.** Finished water storage for disinfection contact time and system demands will be located on the Scrael Hill WTP site. Storage will be provided by two (2) steel reservoirs, each with a volume of 5.7 million gallons, which will be utilized and paid for as follows: 51% by Albany and 49% by Millersburg.
- e) **Finished Water Pipeline.** Finished water will be conveyed in a single pipeline, approximately 48-inch in diameter, to the junction point east of Interstate 5 near the intersection of Century Drive and Berry Drive. From this junction point, separate pipelines will convey finished water to each community. Each community's finished water pipeline will be metered to determine water usage.
- f) **Ownership of Joint Water System Facilities.** Ownership of the joint water supply system shall initially be as shown on Table 1 of Section 4.a. based upon the facility's initial capacity sizing. Ownership will be reallocated based on future capacity expansions made by one or both parties. The facility shall be held in joint ownership unless the parties otherwise specifically agree. Subject to the terms of this agreement, the parties agree that existing assets shall remain the separate assets of their current owner.
- g) **Water Rights Utilization for the Ultimate Joint Water Supply System.** Albany and Millersburg have combined existing water rights and water use permits of 46 mgd, which is equal to the estimated build-out maximum day water demand for both communities. The following describes how the existing water rights and water use permits will be utilized to meet this build-out demand to produce 26 mgd of treated water from the joint water supply system:
 - (1) Existing water rights and water use permits shall remain in the name of the party that obtained them. The parties agree that the actions described below to obtain alternate diversion points and share water for the use and benefit of each party is a fundamental tenet of this agreement. Subject to the terms of this agreement, the parties agree that existing water rights and water use permits shall be considered held in trust for and accrue to the benefit of both parties, without regard to ownership, during those times when there are no restrictions by the Water Master on surface water withdrawals at the affected diversion points. To the extent that surface water withdrawal rights are partially or fully restricted and unavailable, then the available surface

water rights shall be applied for use of the parties that own the surface water rights except as allowed under the provisions of (ii) and (vii) defined below, whereby Millersburg may access Albany's 1878 water right.

- (i) Albany will apply to Oregon Water Resources Department (OWRD) to obtain a dual point of diversion, to include the existing canal diversion location and the new joint raw water intake location, for their existing water right and water use permit.
 - (ii) Albany will utilize their 1878 water right at the new joint raw water intake to provide water during times of drought conditions for both communities as defined in (vii) below, to the extent allowed by OWRD.
 - (iii) Millersburg agrees to secure the point of the diversion for their entire 1989 water use permit to the location of the joint raw water intake. Millersburg will allow Albany to share the same point of diversion at the joint raw water intake.
 - (iv) Millersburg agrees that the portion of their existing water use permit, in excess of that needed to produce 6 mgd of treated water, will be made available to Albany, at no charge, to meet Albany's community water need.
 - (v) Both parties agree to utilize their water use permits for the joint water supply system during the early implementation and operation phase(s) to allow for full certification of the Albany and Millersburg water use permits. Both parties will also take such actions as may be necessary to formally include both communities' urban growth boundaries in their water right service areas.
 - (vi) The parties agree to develop a water conservation and management plan for the joint water supply system and update the plan as joint water supply facilities are expanded or other conditions dictate.
 - (vii) During times of severe drought or other periods of possible water right restrictions, Millersburg is entitled to access the portion of Albany's 1878 water right used at the joint raw water intake, subject to the same user restrictions as apply to Albany.
 - (viii) The above water right and water use permit allocations may be modified based on OWRD or other State and Federal agencies' requirements that are necessary to permit the joint water supply system.
- (2) **Future Water Rights.** Both parties agree to develop a strategy and jointly pursue additional water rights, as may be required or desired, to meet projected long-term needs and provide reserves for present and future users.

Both parties agree that additional water rights shall be sought jointly and any purchase of additional water rights, by either party, must be approved by the City Councils. In the event of the failure of the parties to agree, either party may acquire additional water rights to serve their users.

- h) Assignment of Permits and Property.** Each party agrees to allow the other party to share any authority or use granted by any permit, conveyance, or deed, to the extent necessary for the construction, operation, and maintenance of the joint water supply facilities.
- i) Obligations Subject To Third Party Actions.** Each party acknowledges that additional permits and approvals are required from third parties to implement the joint water supply system. Both parties will cooperate to secure all required permits and approvals. If the required third party's actions or approvals are not secured, despite best efforts, both parties agree that this Agreement will be amended, as necessary, to meet the intent of this Agreement.
- j) Water Supply During Emergency.** In the event of an emergency which causes the joint water supply facilities to not be operable for an extended period of time (beyond 72 hours), Albany will supply Millersburg with treated water through a metered system intertie. The water will be provided at a cost of services rate of \$ [to be recommended by the Management Committee subject to approval by both parties] that will be updated annually. This rate shall be based upon the cost to provide the treated water as well as sharing of the cost incurred in order to have redundant water treatment facilities at the West-side Supply treatment plant to be available in the event of any emergency. The amount of water provided pursuant to this paragraph may be limited, subject to the same user restriction as applied to Albany, in the event that the West-side Supply treatment plant does not have sufficient capacity to meet the joint water demands of both parties at the time of the emergency.

4. Phase 1 Joint Project Size and Implementation. The joint water supply project facilities will be implemented in phases to meet the growing water supply needs of each community. The following describes the Phase 1 Joint Water Supply Project (subsequently referred to as the "Project"), including key implementation requirements.

- a) Project Capacity.** The Project will include all the facilities described in Section 3 above, sized according to the nature of each facility and the initial capacity need of each community. Table 1 below shows the planned capacity of the Project facilities:

| TABLE 1 JOINT WATER SYSTEM FACILITY | PHASE 1 | CITY SHARE | |
|--|----------|------------|-------------|
| | CAPACITY | ALBANY | MILLERSBURG |
| Raw Water Intake and Pipeline | 26 mgd* | 20 mgd | 6 mgd |
| Raw Water Pump Station | 12 mgd | 10 mgd | 2 mgd |
| Raw Water Pressure Main | 26 mgd* | 20 mgd | 6 mgd |
| Water Treatment Plant | 12 mgd | 10 mgd | 2 mgd |
| System Storage | 5.7 mg | 2.9 mg | 2.8 mg |
| Finished Water Pipelines | 26 mgd* | 20 mgd | 6 mgd |

* Equal to system buildout capacity due to nature of facility
mgd-million gallons per day, mg- million gallons

- b) **Project Implementation Schedule.** The Project will be implemented in an efficient and expeditious manner to bring the new water supply capacity on-line as fast and cost-effectively as possible. Both parties will act in good faith to complete their contribution to the Project, including the acquisition of project financing, rate adjustments, and related matters, so that the Project can be completed on the planned schedule.

The following outlines the planned general implementation schedule:

| <u>Implementation Element</u> | <u>Target Completion</u> |
|--------------------------------|--------------------------|
| Final Project Size and Scope | July 2002 |
| Submit Permit Applications | July 2002 |
| Permit Reviews | December 2002 |
| Project Design and Bidding | April 2003 |
| Project Construction | June 2003 |
| Project Start-up and Operation | January 2006 |

- c) **Project Implementation Project Manager:** The parties agree that Ms. Diane Taniguchi-Dennis, Albany Assistant Public Works Director/City Engineer, shall be the designated Project Manager for the implementation of the Project. In this role, the project manager will serve as the agent and representative of both Albany and Millersburg and represent the cities in the planning, design, permitting, bidding, construction, start-up, and associated activities of the Project. Unless otherwise designated in writing by the Management Committee, the Project Manager shall:

- (1) Coordinate the efforts of Consultants and Contractors.
- (2) Conduct the day-to-day affairs of the Project and exercise best professional judgement in all matters.

- (3) Be subject to the control and direction of the parties hereto through the Management Committee.
- (4) Be responsible for the control and supervision of all activities of the Project.
- (5) Prepare and submit to the Management Committee monthly status reports for the Project and prepare such other reports and information as the parties may reasonably require.
- (6) Approve change orders not exceeding 10 percent in aggregate of the original contract amount.
- (7) Take up such actions reasonably necessary during an emergency.
- (8) The Management Committee shall make the policy decisions for the project implementation regarding project permit strategy, planning, design, permitting, bidding, and construction management. Administration and implementation of the decisions of the Management Committee shall be the responsibility of the Project Manager.
- (9) The Project Manager shall have exclusive authority to enter into all contracts necessary to implement the decision of the Management Committee. Such contracts shall include, but not be limited to, professional services and consulting agreements, contracts for the provision of material and equipment, and construction contracts, using the purchasing procedures or requirements applicable to the City which employs the Project Manager. Award of contracts over \$25,000 shall require the prior review and approval of the Management Committee. All contracts shall be executed by, and in the name of, the City that employs the Project Manager, but shall be for the benefit of the joint facility.
- (10) The party that employs the Project Manager shall be entitled to invoice the project for the direct and indirect costs of the Project Manager. The party shall also be entitled to invoice the project for those staff members or consultants who are reasonably required to assist the Project Manager, in carrying out any function assigned to the Project Manager, pursuant to this agreement. Such costs will include, but not be limited to, salary, benefits, overhead, general administrative expenses, professional service agreements, and other contracts. Invoices for Project Manager services are subject to review and approval by the Management Committee. Each party agrees to provide their own staff services and legal review with the cost to be paid by the individual parties as it relates specifically to the support of their policy- or decision-making for the individual parties, except as specifically provided herein.

d) Project Consultant: The parties agree to hire CH2M Hill Northwest, Inc., as the consulting firm, with Mr. Mark Lasswell, Senior Vice President, as the Principal-in-

charge of the project for the firm to provide consulting services for the evaluation, design, permitting, bidding, and construction services for the Project. The scope of work and budget for the various Project implementation elements will be negotiated and awarded on a Task Order basis with the consultant.

- e) **Project Capital Cost Allocation:** The estimated total capital cost for the Project is \$35-\$40 million. Both parties agree that the Project capital cost contribution by each party will be based upon each party's required capacity built into each facility component of the Project, as defined in Table 1. Following the Project size and scoping work, a preliminary capital cost estimate and cost allocation to each party will be developed and approved by the joint City Councils (Exhibit 4). This capital cost estimate and cost allocation will be regularly updated as the Project implementation progresses.

This basic cost allocation principle is modified by the following:

- (1) **Credit for Previous Millersburg Work:** Millersburg has invested over \$1,300,000 to date in the design, permitting, and land acquisition for its proposed water project. It is considered that \$ [to be recommended by the Management Committee subject to approval by the parties] of this prior investment has direct value to the joint water Project and will be credited against Millersburg's capital cost contribution for the Project.
 - (2) **Credit for Albany Property Acquisition and Pipeline Savings:** Albany acquired the 107-acre Archibald property that is the site for the joint raw water intake, raw water pump station, and a portion of the raw water pressure main. Utilizing this property for a portion of the raw water pressure main reduces the length of this pipeline by approximately 1,035 feet, as compared to the routing of the pipeline on Mountain View Place, and will result in a pipeline cost savings. It is considered that \$ [to be recommended by the Management Committee subject to approval by the parties] of this pipeline savings has direct value to the joint water Project and will be credited against Albany's capital cost contribution for the Project.
- f) **Project Funding.** Both parties will secure funding to support the Project implementation, consistent with the schedule outlined in Section 4.b., and the capital cost estimate and allocation defined in Section 4.e. As appropriate, both parties will implement rate increases and other measures necessary to secure the required Project funding.
- (1) Following approval of the Project preliminary capital cost estimate and cost allocation, a cash flow analysis will be developed to outline the most cost effective utilization of existing and future project funding.
 - (2) Millersburg has secured a loan from the Oregon Economic and Community Development Department (OECDD) and will strive to secure final approval

from OECDD to utilize their existing loan for the implementation of Millersburg's share of the Phase 1 joint Project.

- (3) Albany has not yet secured funding for their share of the Project and will seek loans, grants, or bonds to meet their commitment. Following completion of the cash flow analysis defined in Section 4.f.1, and no later than November 1, 2002, Albany will evaluate their funding alternatives and submit a funding plan and schedule to the Management Committee.
 - (4) Any grants or other special funding that may be jointly secured by both parties from the Federal or State government for the Project implementation shall offset each party's capital cost contribution according to the approved capital cost allocation as defined in Section 4.e.
 - (5) At the time of award of any design consultant or capital construction contract, each party shall pay its share of the cost into a combined capital project account managed by the City of Albany, which may be drawn upon by the Project Manager for the payment of costs in obtaining permits, design, and construction of the project. The Project Manager shall render a monthly accounting to the Management Committee of the account balance. Any interest earned on said funds shall inure to the benefit of the parties proportionate to their contribution. The parties agree to provide such additional funds as necessary to keep the account sufficient to pay contractual obligations. Progress payments shall be paid from the combined capital project account.
 - (6) Change orders, which do not exceed 10% of the original contract amount, shall be within the authority of the Project Manager to execute without review or approval by the Management Committee. Change orders, which in the aggregate exceed 10% of the original contract amount, shall require the prior approval of the Management Committee. Change orders, which exceed the total project budget, shall require the prior approval of both parties.
- g) Interim Water Supply Improvement.** Albany has completed, at its expense, opening of the bypass to the master water meter and removal of the backflow prevention devices in the existing piping system that are serving Millersburg. These actions will improve system flow and pressure to Millersburg.
- h) Successors of Named Individuals.** The Management Committee may, at any time, designate successors of individuals named herein under 4.c. and 4.d. and must affirm their designations at least annually, based upon the voting terms as set out under 6.a. of this agreement.

5. Joint Water Supply System Capacity Management and Expansion. Both parties agree to manage the available capacity and provide additional capacity in an efficient and cost-effective manner, consistent with the following:

- a) **Existing Capacity Management.** The parties agree that use of the joint water supply facilities by the parties should be accomplished first by utilizing the capacity in the components to serve the needs of the parties. The facilities should be expanded only after the parties are projected to use all capacity within a reasonable planning horizon or at such other time as the Management Committee deems appropriate.
- b) **Surplus Capacity Management.** Each party agrees to lease capacity in the joint system facility to the other to avoid premature system expansion. Each party shall prepare and submit to the Management Committee their 20-year demand forecast, as documented in their most recent Water Master Plan or any subsequent Water Master Plan updates. Annually, the Operating Entity will prepare a report for the Management Committee and the parties to review their actual water demand as compared to their 20-year water demand forecast. Each party may deduct 50% from its surplus to hold as an additional reserve. Based upon the report and the additional reserve, the Management Committee will determine if there is any surplus capacity available. To the extent that one party is in "deficit" while another is not, the party in "surplus" shall provide capacity to the other and receive compensation. The parties understand and agree that any leasing agreement is a short-term method (not to exceed 2 years) to allow deferral of expansion or new construction to be completed to provide a longer term stable supply. Lease compensation shall be determined by using the Depreciated Replacement Cost value of the portion of the asset over the remaining Book Depreciation Life times the interest rate, equal to the average annual Local Government Investment Pool for the applicable calendar year, or such other method as the parties mutually agree.
- c) **Capacity Additions.** In determining the appropriate time to begin expansion of the system, the Management Committee shall consider the time required for environmental reviews, designs, permits, and construction. In determining when to expand the facilities, the Management Committee shall take into consideration the demand requested by the parties, prudent utility planning standards and available surface water rights. Nothing herein shall prevent a party from not participating in an expansion, nor from proceeding on its own at its own cost, to meet its community needs. Any proposal to expand shall be in writing and shall specify the size of the expansion and estimated cost. Within 60 days of the notice, the party receiving the notice shall provide written notice whether to accept or reject participation in the expansion. Notice to participate in an expansion shall be in writing and specify the percent participation

6. Joint Water Supply System Management, Operation, and Maintenance. Both parties agree to contribute to the management, operation, and maintenance of the joint water supply system in a manner that promotes high quality, reliable, and cost-effective water supply to each community, in accordance with the following conditions:

- a) **Joint Water Supply System Governance.** Each party shall initially appoint and fill any subsequent vacancies for three persons to a 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. The Management

Committee shall manage the business and affairs of the joint water supply facilities covered by this Agreement as well as the future facilities the parties deem should be governed by this Agreement. The Management Committee shall perform such further duties as may be required of it by this Agreement and, except as specifically provided herein, shall have all powers necessary and incident to the execution of its specific duties. Meetings of the Management Committee shall be conducted in accordance with the provisions of the Oregon Public Meeting Law, ORS 192.610-192.710. The Management Committee shall hold meetings not less than quarterly. Special meetings may be called by the Chairperson or Vice Chairperson. Four members, with at least two (2) from each party, shall constitute a quorum for the transaction of business. An affirmative vote of four members of the Management Committee shall be necessary to decide any matter unless a different voting requirement for a specific action is required under this Agreement. The Management Committee shall elect from its membership a Chairperson and a Vice-Chairperson, who shall be members of the Management Committee. Such election shall occur annually at the March meeting of the Management Committee. The Chairperson and Vice-Chairperson shall not be from the same party.

- b) **Joint Water Supply Facilities Operating Entity.** The parties agree that Albany currently is the appropriate entity to provide operation and maintenance (O&M) duties for the joint water supply facilities. The parties agree that periodically they will assess the need, quality, and competitiveness of services provided by the Operating Entity and to consider other options that may exist to provide the highest quality water at the most reasonable cost to each party.

The Operating Entity shall be responsible for conducting the day-to-day business affairs of the joint water supply system, including payment of invoices, accounting, budgeting, operation, planning, project management, maintaining records, providing public meeting notices, and such other duties as required for operations. The Operating Entity shall designate a lead individual who will report to and coordinate support to the Management Committee. The Operating Entity shall have the power, subject to prior budget approval by both parties, to:

- (1) Approve contracts for goods and services as appropriated in the budget.
- (2) Approve change orders not exceeding 10% in aggregate of the original contract amount.
- (3) The parties agree that when it is impractical to convene the Management Committee, the operating entity shall have the authority to take reasonable and prudent action under the circumstances to protect the project and 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.
- (4) Take up such actions reasonably necessary during an emergency; and such other powers as may be granted by the Management Committee.

c) Annual Operation and Maintenance Budgeting, Accounting, and Audits. Each party shall budget and appropriate its proportionate share of the O&M costs of the system. O&M costs shall be based upon utility cost of service principles for cost allocations. Each party's proportionate share of joint facilities O&M costs, including reserves for repair and replacement, debt service, contingency, and other expenses, will be based on the actual percentage of total water consumption by each party.

- (1) A draft budget shall be prepared by the Operating Entity based upon the budget policies recommended by the Management Committee and approved by each party. The draft budget shall be distributed to the Management Committee by February 1st of each year. Upon Management Committee approval of the draft budget, the budget shall then be distributed to the parties by March 1st of each year. The parties shall adopt their respective shares of the budget by the close of their normal annual budget process.
- (2) Each party shall transfer on a quarterly basis their anticipated annual operating and maintenance allocation as the revenue source into the Operating Entity's Operations and Maintenance budget by July 1st, October 1st, January 1st, and April 1st of each fiscal year. Within 30 days of the end of the fiscal year, the Operating Entity shall review actual usage of the system based upon utility cost of service principles, based upon the actual percentage of total water consumption by each party. To the extent that a party has paid more, then the funds so paid, shall be retained by the Operating Entity, but the party shall be given a credit toward the succeeding fiscal year's operation and maintenance estimate. If the party has paid less than the actual O&M amount, then that amount shall be added to the succeeding fiscal year's projections and paid to the Operating Entity. Interest that accrues on the funds paid for annual operation and maintenance shall accrue to the benefit of the Entity that contributed them and shall be considered as part of the true-up calculation. Initially, the contribution of estimated O&M shall be the full amount estimated by the parties from the date of the agreement to the end of the current fiscal year.
- (3) The Operating Entity shall provide monthly budget reports to the Management Committee not later than 30 days after the end of each month. The report shall show expenditures by budget item for each transaction through the last working day of the preceding month.
- (4) The Management Committee may cause an independent audit to be performed periodically by a certified public accountant, licensed and certified to do municipal auditing in the State of Oregon. If the Operating Entity is a municipal organization, the audit may be performed as part of that municipality's normal audit process. Audits shall be conducted in accordance with the provisions of the Oregon Municipal Audit Law.

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

a) **Term and Termination.** The term of this Agreement shall be perpetual unless otherwise terminated.

(1) **Voluntary Termination.** Each party shall have the right to voluntarily withdraw from a project if adequate funding is not secured in a timely fashion from the other party, consistent with Section 4 to insure planned Project completion.

(2) **Involuntary Termination.** 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 termination, the nondefaulting party shall give notice and a 30-day period for the defaulting party to cure or commence diligently to cure the default.

(3) **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 all or part of its participation in this agreement by giving written notice of its desire to terminate to the other party and stating a date for termination which 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 Section 7.c. of this agreement. If the remaining party refuses to acquire all of the interest that is offered for sale, then the terminating party shall have the right to sell or assign its interest to another local government party. The consent for the third to purchase the assets and become part of this agreement party shall not be unreasonably withheld.

The payment price for the subject interest shall be paid in full within 18 months following the date of termination set forth in the notice of intent to terminate. Interest on the amount owed shall be at the Local Government Investment Pool Rate.

c) **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 negotiation fails to resolve the dispute.

(1) **Step One: (Negotiation).** The nature of the dispute shall be reduced to writing by the party alleging breach or seeking interpretation and shall be presented to the other party. The City Councils of each party shall then meet jointly and attempt to resolve the issue. If the dispute is resolved at this step,

there shall be a written determination of such resolution approved by the respective Councils, which shall be binding upon the parties.

(2) **Step Two: (Mediation).** If the dispute cannot be resolved within thirty (30) days at Step One, or a longer time period mutually agreed to by both parties, the parties shall submit the matter to non-binding mediation. The parties shall attempt to agree on a mediator. If they cannot agree, either party shall apply to the presiding Linn County judge to assign a mediator. The common costs of mediation shall be borne equally by the parties who shall each bear their own costs and fees therefor. If the issue is resolved at this step, a written determination of such resolution shall be signed by each designated representative and approved by their respective Councils.

(3) **Step Three: (Binding Arbitration).** If the parties are unsuccessful at Steps One and Two, the dispute shall be resolved through binding arbitration. Any dispute or difference arising out of this Agreement, its application or interpretation, which cannot be settled amicably between the Parties within a reasonable time, shall be finally settled under the rules of conciliation and arbitration of US Arbitration & Mediation of Oregon by one or more arbitrators appointed in accordance with such rules. The arbitration shall take place in Linn County. The Oregon Rules of Civil procedure and the Oregon Evidence Code shall be applicable. Any award or final decision rendered pursuant to such arbitration may be entered for enforcement, and enforcement obtained, in any court of competent jurisdiction. The costs of arbitration shall be shared equally by the parties, except that the losing party shall pay the reasonable attorneys' fees incurred by the prevailing party. This Agreement shall be construed and interpreted in accordance with the laws of the State of Oregon.

(4) **Attorneys Fees.** The parties agree that if any dispute or claim arises out of this Agreement, the prevailing party shall be entitled to such reasonable attorney's fees and costs as may be awarded by the arbitrator, including any appeal therefrom.

d) **Amendment.** This Agreement may be amended if each party concurs to the proposed amendment in writing, signed by authorized representatives of each party.

e) **General Provisions.**

(1) **Good Faith, Cooperation, Due Diligence, and Further Action.** The parties hereby covenant, warrant, and represent to each other good faith, complete cooperation, due diligence, and honesty in fact in the performance of all obligations of the parties pursuant to this Agreement. The parties hereto shall execute and deliver all documents, provide all information, and take or forebear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement. All promises and covenants are mutual and dependent.

- (2) **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 each City Council.
- (3) **Instruments of Further Assurance.** From time to time, at the request of either party, each party shall, without further consideration, execute and deliver such further instruments and shall take such further action as may be reasonably required to fully effectuate the purposes of this Agreement.
- (4) **Merger Clause.** This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the Project and supersedes all previous agreements and understandings relating to the Project.
- (5) **Assignment.** Neither party shall have the right to assign its interest in this Agreement (or any portion thereof), without the prior written consent of the other parties. If the assignee is another local government, such consent shall not be unreasonably withheld.
- (6) **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.
- (7) **Counterparts.** This Agreement may be executed in any number of counterparts and by the parties or separate counterparts, any one of which shall constitute an agreement between and among the parties.
- (8) **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 Recorder
 City of Millersburg
 4222 NE Old Salem Road
 Albany, OR 97321

- (9) **New Members.** No new members may acquire an interest except upon unanimous consent of the parties hereto. The purchase price to be paid and all other terms and conditions shall be negotiated at the time of purchase.

(10) Application of Agreement to All Parties. All terms of this Agreement shall be applicable and binding upon any and all parties which have any proprietary ownership in the joint water supply system.

(11) Prior Memorandum of Understanding (MOU). This Agreement supercedes and replaces the parties' joint water supply project MOU executed January 9, 2002 (Exhibit 5).

IN WITNESS WHEREOF, the parties have duly authorized the same, and caused their respective officers to execute this instrument on their behalf.

CITY OF ALBANY

By: _____
Mayor

ATTEST:

By: _____
City Recorder

APPROVED AS TO FORM:

By: _____
Albany City Attorney

CITY OF MILLERSBURG

By: _____
Mayor

ATTEST:

By: _____
City Recorder

APPROVED AS TO FORM

By: _____
Millersburg City Attorney

EXHIBITS

- 1. Map showing general layout of joint water supply facilities.**
- 2. Map showing location of joint water supply intake, gravity pipeline, and pump station.**
- 3. Map showing location of joint raw water treatment plant.**
- 4. Joint Project Phase 1 project cost estimate and cost allocation.**
- 5. January 9, 2002, Memorandum of Understanding.**

EXHIBIT 1

**Albany
Millersburg
Joint Water
Project**

- Facilities
- Intake
 - Pump Station
 - Reservoir
 - Treatment Plant
 - Intertie

- Raw Water
- Treated Water
- Existing Water Lines

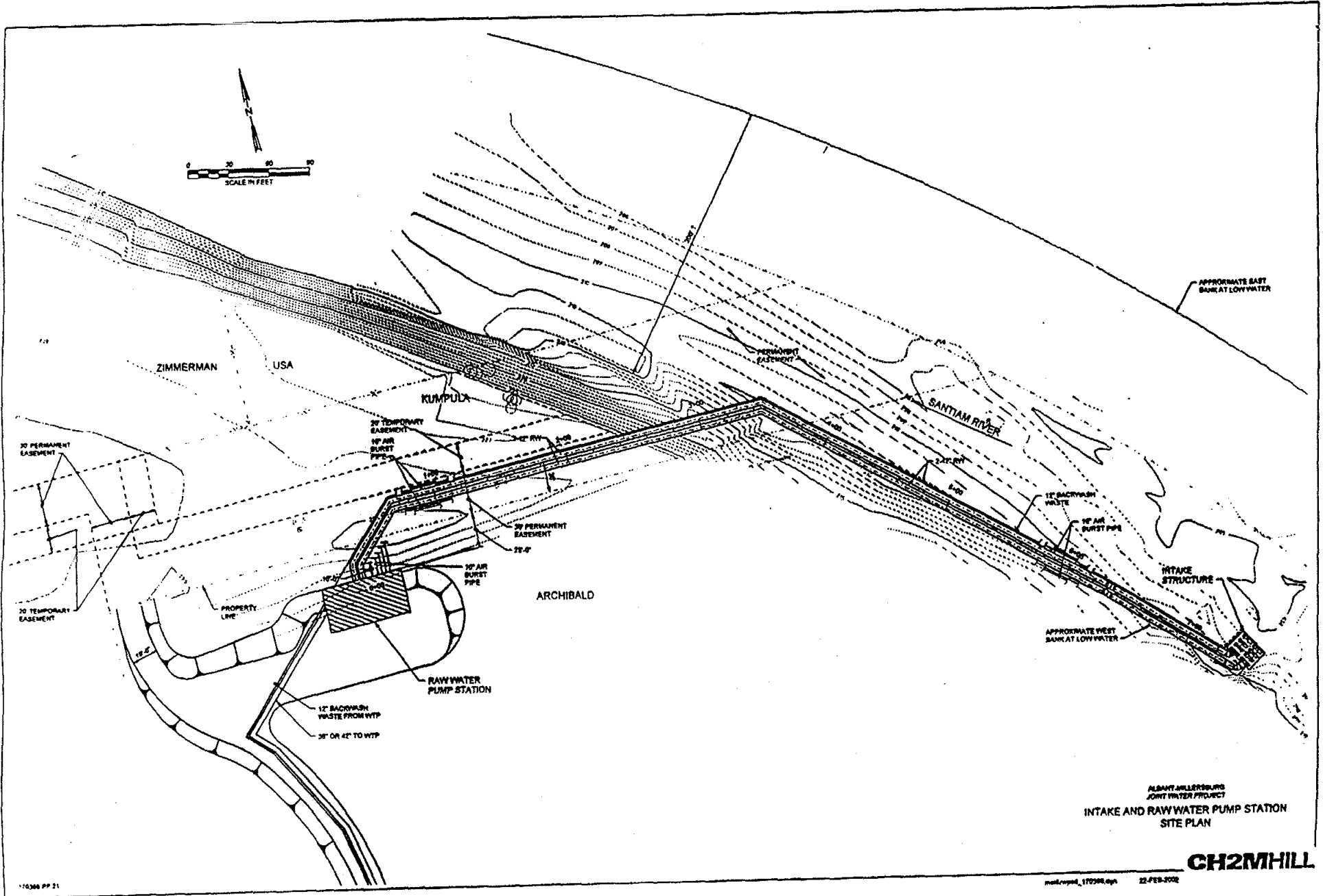
- City of Albany Property
- City of Millersburg Property

- Albany UGB
- Albany City Limits
- Millersburg City Limits and UGB



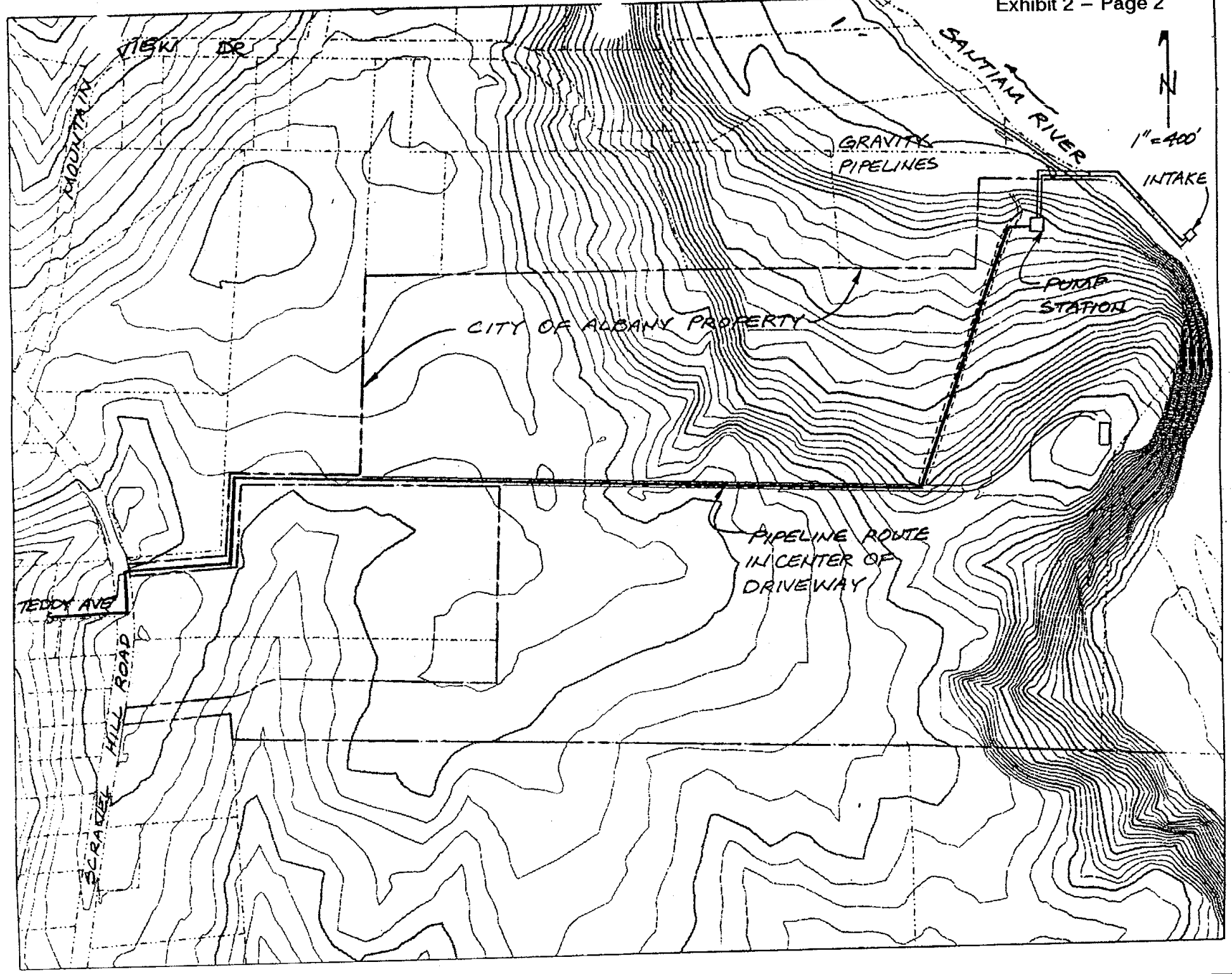
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ALBANY HILLERSBURG
JOINT WATER PROJECT
INTAKE AND RAW WATER PUMP STATION
SITE PLAN

CH2MHILL



RISK DR

MOUNTAIN

SAUGAN RIVER

GRAVITY
PIPELINES

1" = 400'

INTAKE

PUMP
STATION

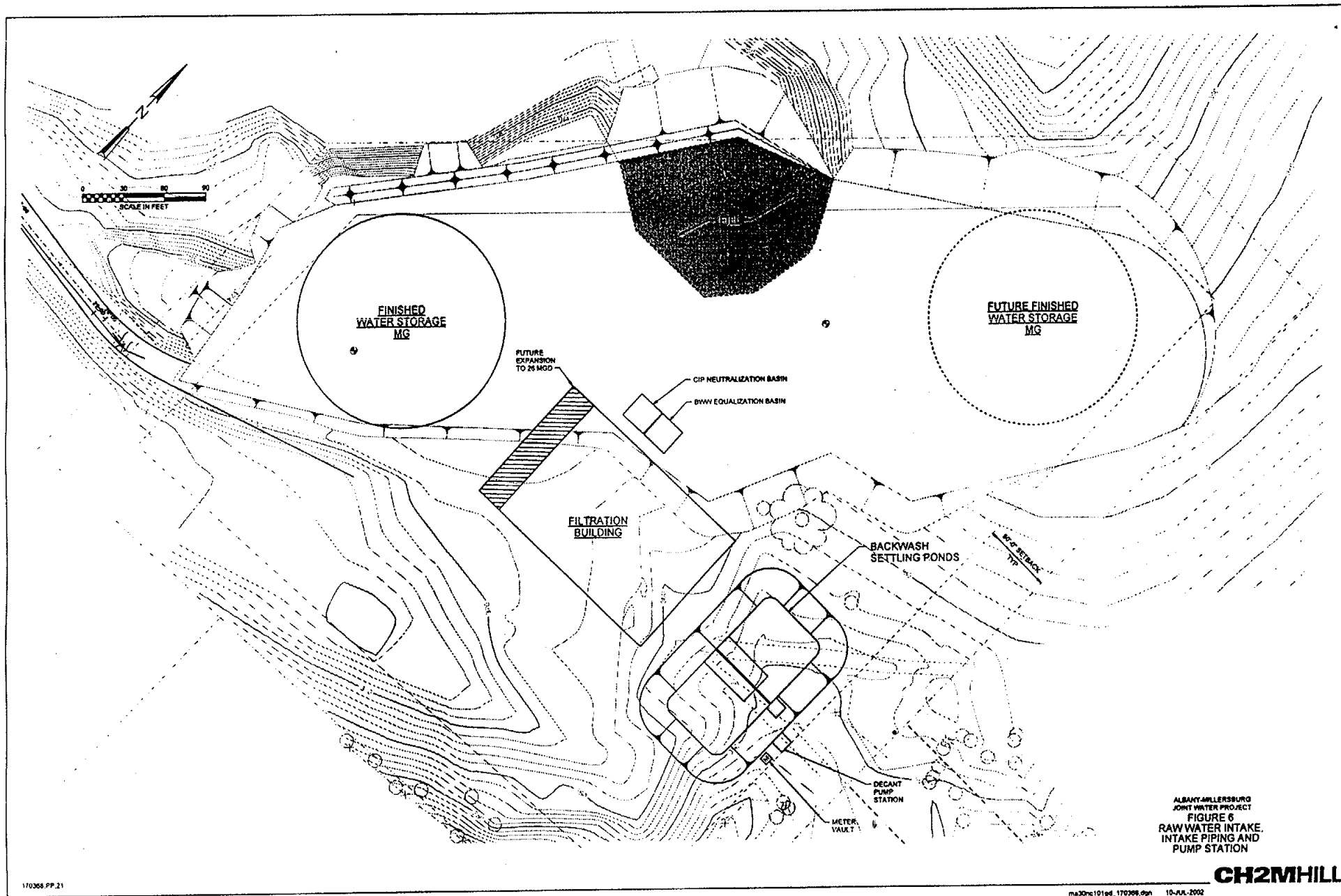
CITY OF ALBANY PROPERTY

PIPELINE ROUTE
IN CENTER OF
DRIVEWAY

TEDDY AVE

HILL ROAD

SCRAGGS



Phase 1 Project Cost Estimate and Cost Allocation

Phase 1 Project Summary: Joint Intake, RWPS, treatment facilities, storage and pipelines from Santaiam River to each City. Phase 1 capacity of 12 mgd (Millersburg 2 mgd, Albany 10 mgd), buildout joint system capacity of 26 mgd.

| JOINT PROJECT FACILITY-CONFIGURATION | COST ESTIMATE | COST ALLOCATION ASSUMPTIONS | ALBANY COST | MILLERSBURG COST |
|--|---------------------|---|---------------------|--------------------|
| GENERAL CONDITIONS | \$1,940,000 | Based on conceptual design cost estimate; split based on Construction costs Albany 79%, Millersburg 21% | \$1,532,600 | \$407,400 |
| RAW WATER INTAKE/PIPING- Sized and constructed for full ultimate capacity (26 mgd) | \$950,000 | Based on conceptual design cost estimate; split based on Ultimate MDD flow- 77% Albany, 23% Millersburg | \$731,500 | \$218,500 |
| RAW WATER PUMP STATION W/O PUMPS - Design and construct pump building for ultimate capacity (26 mgd) | \$1,050,000 | Based on conceptual design cost estimate; split based on Ultimate MDD flow- 77% Albany, 23% Millersburg | \$808,500 | \$241,500 |
| RAW WATER PUMPS-Initially install only Phase 1, 12 mgd, pumps | \$620,000 | Based on conceptual design cost estimate; split based on Phase 1 MDD flow- 83.3% Albany, 16.7% Millersburg | \$516,460 | \$103,540 |
| RWPS FORCEMAIN- Common pipeline to Scravel Hill WTP site | \$1,781,400 | Based on conceptual design cost estimate; split based on Ultimate MDD flow- 77% Albany, 23% Millersburg | \$1,371,678 | \$409,722 |
| WATER TREATMENT PLANT- Combined plant on Scravel Hill site; initial capacity 10 mgd Albany and 2 mgd Millersburg | \$13,165,000 | Based on conceptual design cost estimate; split based on Phase 1 MDD flow- 83% Albany, 17% Millersburg | \$10,926,950 | \$2,238,050 |
| FINISHED WATER STORAGE- Joint Millersburg and Albany storage at Scravel Hill, 5.65 MG | \$1,704,000 | Based on providing finished water storage requirements for each community (2.8 mg M, 2.85 MG A); assumes welded steel tanks | \$859,540 | \$844,460 |
| BACKWASH SETTLING PONDS | \$100,000 | Based on conceptual design cost estimate; split based on Ultimate MDD flow- 77% Albany, 23% Millersburg | \$77,000 | \$23,000 |
| FINISHED WATER PIPELINE- Joint Millersburg and Albany FW pipeline CCP. Estimated Size 48" | \$1,466,500 | Based on conceptual design cost estimate; split based on Ultimate MDD flow- 77% Albany, 23% Millersburg | \$1,129,205 | \$337,295 |
| Instrumentation and Control System | \$2,230,000 | Based on conceptual design cost estimate; split based on Phase 1 MDD flow- 83% Albany, 17% Millersburg | \$1,850,900 | \$379,100 |
| Construction subtotal | \$25,006,900 | | \$19,804,333 | \$5,202,567 |
| Contingency @15% | \$3,751,035 | | \$2,970,650 | \$780,385 |
| PHASE 1 JOINT PROJECT ESTIMATED CONSTRUCTION SUBTOTAL | \$28,757,935 | | \$22,774,983 | \$5,982,952 |
| Engineering and administration @ 20% | \$5,751,587 | Based on conceptual design cost estimate; split based on Construction costs Albany 79%, Millersburg 21% | \$4,543,754 | \$1,207,833 |
| Approximate credit to Millersburg for previous engineering* | | | \$1,200,000 | (\$1,200,000) |
| Approximate credit for Albany purchase of Archibald Property* | | | (\$300,000) | \$300,000 |
| ESTIMATED PHASE 1 JOINT PROJECT COST (w/o Albany Finished Water Transmission) | \$34,509,522 | | \$28,218,737 | \$6,290,785 |

** To be reviewed and refined by Management Committee and approved by Councils*

OTHER PROJECT ELEMENTS: Albany Finished Water Transmission Main on Century Drive

| | | | | |
|---|---------------------|-------------|---------------------|--------------------|
| FINISHED WATER TRANSMISSION- Albany Water Transmission on Century Drive from Berry Drive to Knox Butte Rd. 42" CCP. | \$2,931,000 | Albany Only | \$2,931,000 | |
| Contingency @15% | \$439,650 | | \$439,650 | |
| Engineering and administration @ 20% | \$674,130 | | \$674,130 | |
| Total Other Project Construction and Engineering | \$4,044,780 | | \$4,044,780 | |
| ESTIMATED PHASE 1 JOINT PROJECT TOTAL COST (with Albany Finished Water Transmission) | \$38,554,302 | | \$32,263,517 | \$6,290,785 |

MEMORANDUM OF AGREEMENT

Between

City of Millersburg, Oregon, And
City of Albany, Oregon

Developing a new water supply is a high priority for both Albany and Millersburg. The Albany and Millersburg City Councils have evaluated the technical, permitting and governance issues associated with a joint water supply project. Based on this evaluation, both cities agree that it is in their best interest to pursue a joint water supply project as described in the DISCUSSION PROPOSAL FOR A JOINT ALBANY-MILLERSBURG WATER PROJECT, dated October 18, 2001, as attached. Consistent with this proposal, the discussion and refinements of the proposal as outlined in the minutes of the October 18, 2001 Joint Council Meeting, as attached, and the discussions at the December 17, 2001 joint council meeting, Albany and Millersburg agree to the following:

1. Albany and Millersburg agree to jointly pursue a new water intake on the mainstem of the Santiam River, and a new raw water pump station and associated pipelines to provide a new, high quality water source for both communities.
2. Albany and Millersburg agree to jointly explore the options for joint water treatment at the Scrael Hill site, considering additional facility layout, phasing, siting, permitting, and costing information in Joint Council discussion and deliberations in order to reach a final decision.
3. Albany and Millersburg agree to jointly develop and enter into an Inter-Governmental Agreement (IGA) that outlines the terms and conditions for implementing, financing, operating, maintaining, and administering any agreed upon joint water supply facilities.
4. Consistent with the commitment to a joint water intake and pump station project and possibly other joint water facilities, Millersburg agrees to withdraw and dismiss any legal claim against the City of Albany which pertains to the Archibald Property, Linn County, Oregon. Contemporaneously with, and contingent upon the transfer of the Archibald property to The City of Albany, The City of Millersburg will withdraw and dismiss its remaining claims filed against the Archibalds and against the Archibald Property. The City of Albany agrees to not appeal Linn County's approval of the Millersburg Conditional Use Permit regarding the Cox Quarry site for Millersburg's water treatment and storage facility. If Albany acquires Archibald's property (10S 03W Section 23, Tax Lot 800) Millersburg agrees not to ever challenge Albany's title thereto.
5. Albany and Millersburg agree to not independently implement any agreed upon joint water facilities. If not part of the joint water facilities, each city can independently implement non-joint water facilities, such as storage and piping.

Charles A. McLaren
For the City of Albany, Oregon
Charles A. McLaren---Mayor

Jan 9, 2001
Date

Clayton Wood
For the City of Millersburg, Oregon
Clayton Wood---Mayor

Jan. 8, 2002
Date

DISCUSSION PROPOSAL
for a
JOINT ALBANY-MILLERSBURG WATER PROJECT

10/18/2001

The purpose of this document is to present a proposal for a joint Albany – Millersburg Water Project for consideration and discussion by the joint City Councils. It incorporates a compilation of the interests and issues expressed by each Council at their individual caucus meetings. It is intended to solicit and focus the joint Council discussion on areas of common agreement and highlight specific areas that may require additional exploration to reach a final consensus decision regarding a joint water project. This proposal presents information on the proposed joint water project facilities, their implementation, and governance.

A. JOINT WATER PROJECT FACILITIES

Albany and Millersburg Councils agree that a raw water intake, raw water pump station and some associated piping should be pursued jointly to secure another high-quality, long-term water supply for both communities. Both Councils also expressed interest in the reliability and the capital and operations and maintenance (O&M) cost savings of a new joint water treatment plant to produce the highest quality, lowest cost water for both communities. The following describes the general scope of the proposed joint water facilities and key interests and issues associated with their joint implementation.

1. Raw Water Intake (RWI)

A joint RWI would be located at the Archibald site with a capacity of approximately 38-mgd. The preferred design would be the bottom intake, but the side shore design remains an option. Final design selection would be based on the design that is most acceptable to NMFS and ACOE and secures the requisite permit approvals the fastest.

Key elements associated with the implementation of a joint RWI include:

- a. To increase the surety of securing necessary permits by adding flows to the South Fork of the Santiam River, Albany will change the point of diversion for some or all, over time, of their Santiam River Water Rights to the new joint RWI site. The initial commitment is to change the point of diversion for 12-mgd (19cfs) of Water Rights, which is the amount in excess of Albany's current treatment capacity.
- b. If needed to enhance the surety of securing the necessary joint RWI permits, Albany would consider increasing the commitment to include some or all of the remaining Santiam River Water Rights, up to an additional 20-mgd (31cfs) over a specified time and consistent with their plans to meet the build-out demands of the Albany Water System or consider the use of other applicable in-stream water rights.
- c. To add security of supply during drought conditions, Albany would allow

Millersburg access to their 1878 Water Right to supply domestic uses, subject to the same water curtailment and conservation water management conditions as apply to Albany.

- d. To provide additional water availability, Millersburg would allow Albany access to their excess 8-mgd of Water Rights.
- e. Both communities would jointly pursue additional water rights to meet projected long-term needs and provide reserves for industry or other uses. Neither community makes a commitment to purchase additional water rights in this process.
- f. Both communities would work together, pooling information, resources and relations, to acquire the necessary permits for a new joint RWI.

2. Raw Water Pump Station (RWPS)

A joint RWPS would be located in the vicinity of the proposed Millersburg RWPS. The structure would be sized for an ultimate capacity of approximately 38-mgd. The pumping system(s) would be joint or single for each community, depending on the final decision regarding joint treatment. The joint RWPS forcemains would be extended to Teddy Avenue. Individual community or joint forcemains would be extended beyond Teddy Avenue to the WTP site(s) based on decisions regarding joint treatment.

Key elements associated with the implementation of a joint RWPS include:

- a. Both communities would work together, pooling information, resources and relations, to acquire the land and necessary permits for a new joint RWPS.
- b. Both communities agree to a single party responsible for O&M of a joint RWPS, even if the joint facility incorporates separate pumping systems.
- c. Both communities would investigate an alternative route for a joint RWPS forcemain through the Archibald property to reduce the construction cost of the forcemain and avoid possible concerns from the Mountain View Drive residents.

3. Water Treatment Plant (WTP)

Both Albany and Millersburg require additional water treatment capacity to meet near term water demands. Millersburg has planned to build a water treatment plant with an initial capacity of 2 mgd, with a planned build out capacity of 6 mgd. Albany will need to build a new WTP to supplement their existing WTP before 2008 to meet projected water demands. If this additional capacity is provided from a joint water facility, Albany needs to consider building an initial capacity of 10 to 12-mgd at the joint facility with a build-out capacity of 32-mgd from the new intake facility to supplement their existing 20-mgd WTP capacity. In the short-term, this additional 10 to 12-mgd at the joint facility will provide additional capacity, system reliability, and redundancy. In the long term, it provides a firm base for future treatment expansion to meet the larger community needs.

A single joint WTP offers economies of scale that will save both communities capital and long-term O&M costs. Current cost estimates show potential capital cost savings could be approximately 15 +%, which for the build out WTP (38 mgd capacity) would save the communities \$ 4.0 to 4.5 million (2001 dollars) over the period of implementation. O&M cost savings could be an additional \$ 4.0 to 5.0 million (2001 dollars) over the next 50-years. A new joint WTP also offers the benefits of requiring less land area and providing another water source for system reliability.

The challenges of a joint WTP include the complexities of selecting and permitting (or re-permitting) a plant site, the need for Albany to slightly accelerate and Millersburg to slightly delay current plans to implement new WTP, and the governance issues associated with a joint WTP.

The advantages and disadvantages of a joint WTP are related mostly to the possible joint WTP sites and may require additional evaluation and discussion to finalize a decision. Key considerations associated with the possible implementation of a joint WTP include:

- a. Albany would consider accelerating its plans to build a new WTP and Millersburg would consider delaying its current plans to build a WTP if the Councils agree to pursue a new joint treatment facility to be constructed by 2006.
- b. Both communities agree that a joint WTP site inside the Albany or Millersburg Urban Growth Boundaries (UGB) would be the least complex option to permit and would accept an inside UGB site subject to the following conditions:
 - 1) Millersburg retains the Scrael Hill site for system storage.
 - 2) Albany retains their Knox Butte site for system storage.
 - 3) Millersburg would maintain their new water supply connection at the mid-point of their service area.
 - 4) If the Knox Butte area is selected as a joint WTP site, Albany would pay the extra costs for finished water piping to maintain Millersburg's mid-service area connection.
- c. Both communities agree that the Scrael Hill WTP site is a viable joint WTP site and would accept the site subject to the following conditions:
 - 1) The land use permitting uncertainties would be eliminated by jointly pursuing rezoning of the site for public facilities.
 - 2) If Millersburg's build-out system storage needs cannot be accommodated on the existing site with a joint WTP, then both communities would jointly pursue and permit additional land for storage.
- d. Both communities would work together, pooling information, resources, and relations, to acquire the land and necessary permits for a new joint WTP.

B. JOINT WATER PROJECT GOVERNANCE

Any joint water project will require an agreement to define the terms and conditions of the joint community relationship for the development, management and operation and maintenance of any joint water facilities. Both communities prefer the simpler ORS 190 Cooperative Agreement to outline these terms and conditions.

Key terms and conditions of the Cooperative Agreement for a joint water project include:

1. Both communities would secure the necessary funding to allow the joint water facilities to be implemented as expeditiously as possible. Each community reserves the right to withdraw from a joint project if adequate funding is not secured in a manner that maintains expeditious joint project completion.
2. It is acknowledged that a larger joint project may take longer to complete, but the target completion date should be no later than 2006. Both communities will manage the conditions and factors under their control to achieve this target completion date.
3. Capital investment contributed by each community will be defined by their required capacity built into each facility. Ownership in any joint water facilities will be defined by the proportionate level of capital investment. Both communities reserve the right to increase facility capacity at their cost to meet the needs of their community.
4. Albany would limit Millersburg's capital investment in any joint water facilities to an amount not-to-exceed the total expected capital investment for the same facilities in their own project.
5. Millersburg has invested approximately \$ 1.4 million in the design and permitting of their current water project that would value a joint water project. Albany would consider paying for additional costs to modify the design and permit a new joint water project up to Millersburg's level of investment. Cost beyond this level would be shared.
6. A management committee would provide general governance over any joint water facilities. The management committee would be made up of an equal number of members from each City. The roles and responsibilities of the management committee would include policy direction, management oversight, dispute resolution and related actions necessary to meet the joint water supply objectives of each community.
7. Both communities concur that Albany is the logical party at this time to provide operation and maintenance of joint water facilities. If Albany accepts this role, both communities agree to periodically assess the quality and competitiveness of the services provided and to consider other options that may exist to provide the highest quality water at the lowest possible price to each community.
8. The costs for the O&M of any joint water facilities would be shared based on the amount of water consumed, consistent with "cost of service" principles for cost allocations. Both communities would be charged direct costs only (no markups) for water supplied.
9. In the interim period over the next 4-5 years, until a joint water project could be implemented, Albany would:
 - a. Continue Millersburg's water service agreement.
 - b. Make modifications to the existing piping system at the existing water meter location to improve system flow and pressure for Millersburg.
 - c. Consider options to offset the debt service on Millersburg's existing loan with OECD that will be incurred during the extended project implementation period.

APPROVED: _____

**CITY OF ALBANY AND CITY OF MILLERSBURG
JOINT CITY COUNCIL MEETING
Millersburg City Hall
Thursday, October 18, 2001
6:30 p.m.**

MINUTES

CALL TO ORDER:

Mayor Wood called the meeting to order at 6:50 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG:

Mayor Wood led the Pledge of Allegiance to the Flag.

ROLL CALL:

City of Albany Council present:: Ralph Reid Jr., Sue Johnston,
Dick Olsen, Doug Killin, Sharon
Konopa, and Mayor Chuck McLaran

City of Millersburg Council present: Linda Boyce, Scott Cowan, Barry
Holsworth, and Mayor Clayton Wood

APPROVAL OF MINUTES:

Councilor Holsworth moved to approve the September 27, 2001 minutes of the City of Albany and City of Millersburg Joint City Council Meeting. Councilor Killin seconded the motion, and it passed unanimously.

SCHEDULED BUSINESS:

Facilitator Mark Lasswell reviewed what was discussed at the last meeting and asked if there were any outstanding questions relating to the last meeting. No questions were addressed at this time. He reminded the two councils that at their joint meeting on September 27th they decided that there was some consensus as to joint interest. Each individual council has had a work session to discuss these joint interests.

Lasswell facilitated both work sessions and prepared a discussion proposal for a joint Albany-Millersburg water project. This proposal incorporated a compilation of the interests and issues expressed by each Council at their individual work sessions. It is intended to solicit and focus the joint Council discussion on areas of common agreement and highlight specific areas that may require additional exploration to reach a final consensus decision regarding a joint water project. The proposal presented information on the proposed joint water project facilities, their implementation, and governance.

Lasswell said that what he wants to capture are areas where we believe there is joint council agreement. He also wants to capture areas where there may not be agreement or where there are some outstanding issues or some concerns. There may also be areas where there is not quite enough information in anybody's mind to be able to determine if there is a consensus about moving forward. Lasswell said that when each Council held their work sessions, there was probably 80% overlap in common interests.

JOINT WATER PROJECT FACILITIES:

Lasswell said that both the Albany and Millersburg Councils agreed that a raw water intake, raw water pump station and some associated piping should be pursued jointly to secure another high quality, long-term water supply for both communities. Both Councils also expressed interest in the reliability and the capital and operations and maintenance (O&M) cost savings of a new joint water treatment plant to produce the highest quality, lowest cost water for both communities. Lasswell reviewed the general scope of the proposed joint water facilities and key interests and issues associated with their joint implementation.

1. Raw Water Intake (RWI)

Lasswell explained that a joint RWI would be located at the Archibald site with a capacity of approximately 38-mgd. The preferred design would be the bottom intake, but the side shore design remains an option. Final design selection would be based on the design that is most acceptable to National Marine Fisheries Service (NMFS) and Army Corp of Engineers (ACOE) and secures the requisite permit approvals the fastest.

Key elements associates with the implementation of a joint RWI include:

- a. To increase the surety of securing necessary permits by adding flows to the South Fork of the Santiam River, Albany will change the point of diversion for some or all, over time, of their Santiam River Water Rights to the new joint RWI site. The initial commitment is to change the point of diversion for 12-mgd (19cfs) of Water Rights, which is the amount in excess of Albany's current treatment capacity.

Lasswell asked both Councils if he put a check mark next to item (1a) would that be okay. Everyone nodded in the affirmative.

- b. If needed to enhance the surety of securing the necessary joint RWI permits, Albany would consider increasing the commitment to include some or all of the remaining Santiam River Water Rights, up to an additional 20-mgd (31cfs) over a specified time and consistent with their plans to meet the build-out demands of the Albany Water System or consider the use of other applicable in-stream water rights.

Lasswell asked the Councils if they thought this was okay or if they had any questions.

Konopa said that we know in the future that Albany will need more water rights for a full build-out. She asked if we would we be able to get a permit or if we did put in for additional water rights, can that be put in at this intake location and not our current canal so we don't touch our canal. Mark said only if you were able to get those water rights on the South Santiam River. He thought there is some question as to if you can get additional water rights on the South Santiam and said you might be able to. He thinks there is a higher probability of getting water rights on the Willamette. But this would be where ever you can get those, whether you buy existing water rights from the Santiam or the Willamette. Brand new water rights might be harder in some peoples minds the way the water situation is going. Reid said not only will they be hard to get, but they would be less secure.

Floyd Collins, Public Works Director for the City of Albany said that if future needs were met by purchasing stored water from the Corp then the answer to the councilors question would be yes.

Lasswell restated the intent of (1b). What this is intended to do is to gain approval for a joint intake.

Boyce asked Lasswell how far into the future are we looking at that? Lasswell said we would probably know if we can permit the project in about three months or less.

Boyce asked if horizontal wells would work for Millersburg and Millersburg decided to go on their own, would Albany try to stop them like they have in the past?" McLaran replied "Not at this moment."

Lasswell asked Albany if they were comfortable that if we needed to sweeten the pot so to speak that you would consider increasing their commitment to the water rights.

Johnston asked if we have older water rights and transfer them, and then there becomes a problem with there not being enough water in the river, would somebody be measuring the draw out of the river and saying that no we can't do the newer ones, but you can use the older ones? Lasswell told her that when you are transferring water rights, you really don't change the date of your water right at all. Really you are changing your point of diversion from the canal to a new point of diversion. Johnston said she understands that, but once it's down there its mixed with Millersburgs newer water rights, so you have maybe eight that are ten years old and ten or twenty of them that are several years old, and now there is a water shortage. Do the newer ones not get to draw out? Lasswell said that was possible. That's the advantage of mixing the water rights

together. He said it also is an advantage when you mix them all together to be able to certificate them faster.

Lasswell again asked the councils if they were comfortable with (1b). Olsen said that he isn't really comfortable with either one because presently we take our water from above Lebanon. He said we don't have to think about Lebanon's sewage disposal plant, we don't have to think about all the industries that have to locate in Lebanon, and it's a lot better place to take the water. Lasswell asked Olsen if he was more comfortable with the potential implications or less comfortable with the potential implications of discharges to the South Santiam versus the canal? Olsen replied yes he was.

Killin brought up about the danger of terrorism and the danger of all the fertilizer that is already going in there, and he thinks there are some present dangers to that canal. Konopa said she doesn't think they should focus on what if there is a disaster.

Lasswell said the element of (1b) does not commit you to transfer anything, it only commits you to consider it, and you would then have to analyze what would be the conditions upon which you might put more on the table. Lasswell asked the councils if that made them more comfortable. The consensus was yes.

- c. To add security of supply during drought conditions, Albany would allow Millersburg access to their 1878 Water Right to supply domestic uses, subject to the same water curtailment and conservation water management conditions as apply to Albany.

Boyce brought up the issue of water rights during a drought year. They say that we are in a hundred year drought. How does that effect Albany's water rights. Lasswell responded that there would have to be a drought emergency declared which hasn't happened, so drought conditions would have to be worse then we have now.

McLaran said under the current policy, Millersburg does share in Albany's water rights as they obtain water from us like all existing customers, so they already have access to our old water rights.

Mayor Wood wondered how would the industrial domestic water be considered, for people or industrial. Lasswell said that if there were an emergency water situation declared, it would be up to the individual water users to put together their water management plan, and then they would have to delineate the nature of their use and how they're going to manage their use to comply with the state policies.

Lasswell asked the councils if they were comfortable with (1c). The consensus was yes.

- d. To provide additional water availability, Millersburg would allow Albany access to their excess 8-mgd of Water Rights.

Boyce asked would that be to actually give that to them or allow them access to it, but if we needed it for an industry or something we could get it back. Lasswell said that it is a good question, and he probably shouldn't speak but was going to anyway. He said if Albany is allowing you to have really the security of this, they're essentially giving you a portion of their water. He said if I were them, I would want to get in some way, shape or form a portion of your excess water so that I knew I had that. He said the third component of that is the idea that you are going to go out and explore the acquisition of additional water rights. Lasswell said that this was not his deal but your deal. McLaran said this wouldn't really come into play for at least another 30 years or a little bit longer because we wouldn't need over our existing water rights until we reached close to build out. McLaran said during those 30 years we must obtain other water rights.

Lasswell said the point here is to strike a balance. Albany is offering security, is Millersburg prepared to offer the availability of excess water rights?

Wood said our build out is only figured at 5.89-mgd. He said that Millersburg asked for 14-mgd because we had some interest at the time from some fairly good sized water users. He said if we used average figures, we will never need the 8-mgd. Mayor Wood said he would trade that for the security of Albany's water rights.

Boyce said she was told by her brother who works for the City of Hillsboro Water Department, that Millersburg would be crazy to give away our water rights because they are gold.

Lasswell said if Millersburg had projected demands that were anywhere close to the 14-mgd, he would agree with him 100%. He said the fact of the matter is, whether you fundamentally believe all or most of those are really accessible water rights. Boyce asked how can you know for 50 years down the road? Lasswell said you don't. Just the same that you don't know whether you will have a drought next year or not.

Wood said this is only part of the thing that we could wait 30 years as the mayor said, and see if we use past the 6 mgd before they need the 8 mgd and make that decision at that time. We'll have to give up something in the meantime if we run out of water. It doesn't have to be part of the day one agreement. Wood also said another advantage is if Albany had the usage of our water rights in the meantime, couldn't they pump 14-mgd for Millersburg during the peak season or something to get our water rights perfected. Lasswell said yes.

Lasswell asked the councils if they were comfortable with (1d). Konopa replied that if Millersburg is insane on (1d), then Albany is insane on (1c).

Reid asked are we talking of a paper change of titles to the 8-mgd or the use of the 8-mgd. Lasswell said you would not transfer any water rights, you would do this by and through your intergovernmental agreement. Reid said that Millersburg isn't really losing their water rights, they are lending it to us for our use if we need it for a period of time. Both councils indicated that they are comfortable with (1d).

- e. Both communities would jointly pursue additional water rights to meet projected long term needs and provide reserves for industry or other uses. Neither community makes a commitment to purchase additional water rights in this process. Both councils indicated that they are comfortable with (1e).
- f. Both communities would work together, pooling information, resources and relations, to acquire the necessary permits for a new joint RWI. Both councils indicated that they are comfortable with (1f).

2. Raw Water Pump Station (RWPS)

A joint RWPS would be located in the vicinity of the proposed Millersburg RWPS. The structure would be sized for an ultimate capacity of approximately 38-mgd. The pumping system(s) would be joint or single for each community, depending on the final decision regarding joint treatment. The joint RWPS forcemains would be extended to Teddy Avenue. Individual community or joint forcemains would be extended beyond Teddy Avenue to the WTP site(s) based on decisions regarding joint treatment.

Key elements associated with the implementation of a joint RWPS include:

- a. Both communities would work together, pooling information, resources and relations, to acquire the land and necessary permits for a new joint RWPS. Both councils agreed that (2a) would be okay.
- b. Both communities agree to a single party responsible for O&M of a joint RWPS, even if the joint facility incorporates separate pumping systems.

Boyce asked Lasswell if we agreed to doing both the raw water and the pump station jointly, built the building but Albany wasn't ready to go, and we put our pumps in, then Albany came in at a later date, would that create a conflict? Lasswell said not necessarily, at that point in time you would have to discuss if Albany doesn't put in a pump station. This is saying that it doesn't make sense for two parties to operate and maintain a single facility. He said if Albany doesn't put in a pumping system, they could say they really aren't interested in operating that, Millersburg you figure out how to operate the pump station. At a later date, if they put in their system, they can say you keep running it, you're doing fine, or you can reevaluate what you're doing and say Albany, do you want to operate it now. Lasswell said what (2b) is saying is that Millersburg isn't going to operate part of it and Albany isn't going to operate part of it because that doesn't accomplish some of the efficiencies that either community is looking for. Lasswell said you could do that if you wanted to, but it doesn't make very good sense. This isn't making a commitment right here that

either group would do it. It makes sense for only one entity, whether it is Albany, Millersburg or a third party to operate the joint pump station. Both councils agreed to (2b).

- c. Both communities would investigate an alternative route for a joint RWPS forcemain through the Archibald property to reduce the construction cost of the forcemain and avoid possible concerns from the Mountain View Drive residents.

Boyce asked if Albany purchases the Archibald property, wouldn't they have to go through all of the different land use procedures? Lasswell said yes they would have to go through the land use process.

Konopa asked if Albany got the price comparison of running the pipe through the Archibald property compared to the Mountain View Drive route. She said with the Archibald property we will get stuck with purchasing the whole thing which is a million dollar property. Lasswell said that all the cost comparison you see are basically going on the routing that Millersburg selected. He said this would be a way to reduce costs because the pipe lines would be shorter, but cost would not be the only criteria to purchase the property.

Boyce said since we already have our easements down Mountain View Drive, would we have to get different permits to make it bigger? Jim McWade, Millersburg's Engineer from CH2M Hill said that a larger pipe would have to be installed in the road. He said our current easements are in the road right-of-way, and the permit we have from Linn County is just for the route we have selected, so yes we would have to get different permits.

Lasswell asked if that was okay. Cowan said if we can save money, let's do it. Both councils agreed to (2c).

3. Water Treatment Plant (WTP)

Both Albany and Millersburg require additional water treatment capacity to meet near term water demands. Millersburg has planned to build a water treatment plant with an initial capacity of 2-mgd, with a planned build out capacity of 6-mgd. Albany will need to build a new WTP to supplement their existing WTP before 2008 to meet projected water demands. If this additional capacity is provided from a joint water facility, Albany needs to consider building an initial capacity of 10 to 12-mgd at the joint facility with a build out capacity of 32-mgd from the new intake facility to supplement their existing 20-mgd WTP capacity. In the short term, this additional 10 to 12-mgd at the joint facility will provide additional capacity, system reliability, and redundancy. In the long term, it provides a firm base for future treatment expansion to meet the larger community needs.

A single joint WTP offers economies of scale that will save both communities capital and long term O&M costs. Current cost estimates show potential capital cost savings could be approximately 15+%, which for the build out WTP (38 mgd capacity) would save the communities \$ 4.0 to 4.5 million (2001 dollars) over the period of implementation. O&M cost savings could be an additional \$4.0 to 5.0 million (2001 dollars) over the next 50 years. A new joint WTP also offers the benefits of requiring less land area and providing another water source for system reliability.

Boyce asked if Albany would save more than Millersburg because their portion of a joint WTP would be larger? Lasswell answered not really, it might be that Millersburg would save more.

Lasswell said he would ask a consideration that for Millersburg, if for some reason their plant, if you don't go together, had a problem, could they still get water from Albany in an emergency situation? That way both communities could have the full benefit of the reliability and redundancy of two sources. Boyce said why couldn't one city back the other one, even if they both had their own treatment plants. Holsworth said we already have a water line down, and all we would have to do is open the valve. The consensus of both councils was that each city could back the other one up, however, not at the same level of supply due to the differences in capacity to be developed.

Olsen said that Millersburgs 2-mgd wouldn't go very far to satisfy Albany's 32-mgd. Killin said it would help. Lasswell said the councils are going to have to evaluate whether the capital and O&M savings is a big deal or little deal.

The challenges of a joint WTP include the complexities of selecting and permitting (or re-permitting) a plant site, the need for Albany to slightly accelerate and Millersburg to slightly delay current plans to implement new WTP, and the governance issues associated with a joint WTP.

The advantages and disadvantages of a joint WTP are related mostly to the possible joint WTP sites and may require additional evaluation and discussion to finalize a decision. Key considerations associated with the possible implementation of a joint WTP include:

- a. Albany would consider accelerating its plans to build a new WTP and Millersburg would consider delaying its current plans to build a WTP if the councils agree to pursue a new joint treatment facility to be constructed by 2006.

Boyce wondered if our permits would be extended out that long or would we have to start over. Lasswell said we would need to investigate that. Konopa said that she has a problem with (3a) over the feasibility and not investigating it thoroughly which would be the right location.

Holsworth asked if they know what size building it would take for a joint WTP and informed the councils that it would take a building 13,000 square feet and 6 to 7 acres. Konopa said Albany has properties within their city limits that they have not done a study on.

Reid said that Millersburg at the present time is looking at a plugged in unit. He said if the facility is constructed larger to handle 32-mgd, and this project moves forward on the basis of a joint water treatment facility, following the same type of treatment, would it be conceivable that Albany could start sticking in one or two more units as needed to meet the capacity? He said it shouldn't make a difference as to overall construction. Tom Engleson, Engineer from CH2M Hill said that the building is very expandable. He said with going to a larger system, you couldn't use the memcor system that Millersburg has originally designed. You would use a flooded system versus a pressure system. He said the difference is there would be a lot of concrete work, and there is a greater cost in putting those facilities in. He said you probably wouldn't want to build the building to house the whole 38-mgd because it would be very expensive. He said only about 40 % of the cost will be equipment that you are going to put in.

Konopa asked if Albany decides to push back their plant, would it effect the permit that says the permit is a joint permit and for both cities. Lasswell said he doesn't think that would have a huge effect on the permit. Boyce said if Albany keeps their other WTP, the 38-mgd won't actually be 38-mgd. Lasswell said it depends how they use their west side plant. He asked if they have a phase out for the west side plant? Lasswell said the point is, if you really want to pursue joint treatment, and these kind of savings or other factors appeal to you, you've got to make those decisions up front. Lasswell asked are you prepared to make a commitment to the target date of 2006. The consensus of the council was yes.

- b. Both communities agree that a joint WTP site inside the Albany or Millersburg Urban Growth Boundaries (UGB) would be the least complex option to permit and would accept an inside UGB site subject to the following conditions:

- (1) Millersburg retains the Scrael Hill site for system storage.
- (2) Albany retains their Knox Butte site for system storage.
- (3) Millersburg would maintain their new water supply connection at the mid-point of their service area.
- (4) If the Knox Butte area is selected as a joint WTP site, Albany would pay the extra costs for finished water piping to maintain Millersburg's mid-service area connection.

Floyd Collins, Public Works Director for the City of Albany clarified the route of (3b)(4). The route that the council would be considering is from Albany's northern boundary of their UGB on Century Drive, to the point of connection. He said Albany needs everything else from their Knox Butte site over to Century Drive anyway, and they will get some of the costs back from SDC charges along the way.

Cowan asked what is the advantage for Albany for having the site at Knox Butte. Reid, Konopa and Killin all said that their preference is to not locate the WTP outside Albany's UGB. Olsen didn't agree with that. Lasswell said the benefit of locating the WTP within an Urban Growth Boundary is the surety of getting a plant site permit without opposition.

Both councils generally agreed with (3b)(1),(2),(3),&(4).

- c. Both communities agree that the Scravel Hill WTP site is a viable joint WTP site and would accept the site subject to the following conditions:
 - (1) The land use permitting uncertainties would be eliminated by jointly pursuing rezoning of the site for public facilities.
 - (2) If Millersburg's build-out system storage needs cannot be accommodated on the existing site with a joint WTP, then both communities would jointly pursue and permit additional land for storage. Both councils agreed with (3c)(1)&(2).
- d. Both communities would work together, pooling information, resources, and relations, to acquire the land and necessary permits for a new joint WTP. Both councils agreed to (3d).

JOINT WATER PROJECT GOVERNANCE:

Any joint water project will require an agreement to define the terms and conditions of the joint community relationship for the development, management and operation and maintenance of any joint water facilities. Both communities prefer the simpler ORS 190 Cooperative Agreement to outline these terms and conditions. Key terms and conditions of the Cooperative Agreement for a joint water project include:

1. Both communities would secure the necessary funding to allow the joint water facilities to be implemented as expeditiously as possible. Each community reserves the right to withdraw from a joint project if adequate funding is not secured in a manner that maintains expeditious joint project completion.

Lasswell said that Millersburg already has their money so the funding issue really applies to Albany. He asked if Albany is ready, willing and able to begin incurring some additional debts and raise rates to pay for that debt to do new water projects. McLaran said we are ready and able. Konopa said at a cost to the citizens. Albany's council agreed to (B1).

2. It is acknowledged that a larger joint project may take longer to complete, but the target completion date should be no later than 2006. Both communities will manage the conditions and factors under their control to achieve this target completion date. Both council were in agreement to (B2).
3. Capital investment contributed by each community will be defined by their required capacity built into each facility. Ownership in any joint water facilities will be defined by the proportionate level of capital investment. Both communities reserve the right to increase facility capacity at their cost to meet the needs of their community. Both councils were in agreement to (B3).
4. Albany would limit Millersburg's capital investment in any joint water facilities to an amount not to exceed the total expected capital investment for the same facilities in their own project.

Johnston asked if that would be based on their current estimate of cost or the projected possible real cost by the time the plant is completed, because sometimes those costs change. Lasswell said that right now they probably have as real a cost as you can get because they already have a bid. Reid asked if Millersburg has an inflationary clause to their contract. McWade said not in a formal agreement. Albany council agreed that some inflation of Millerburg's current costs would be appropriate to set a limit for future joint project costs. The councils agreed to (B4).

5. Millersburg has invested approximately \$1.4 million in the design and permitting of their current water project that would value a joint water project. Albany would consider paying for additional costs to modify the design and permit a new joint water project up to Millersburg's level of interest. The councils discussed if this was a dollar limit or a performance limit. Killin said that Millersburg is ready to go except for one permit. He said we ought to bring it to the point where Albany and Millersburg are ready to go except for one permit and doesn't know whether that's 1 million or 2 million. Lasswell replied then we really have two concepts. He said one is just the equal dollar, the other is equivalent point of completion. Killin said he thinks the equivalent point of completion is fair. Reid said a lot of the work has been done and we wouldn't have to do it. He thinks that this would put more willingness on Millersburg, that they would put more in the design then we will. Killin said proportionately they would put more into the design then Albany.

Lasswell said from this day forward, on the raw water intake, Albany pays for the cost to get it to the point where we are dangerously close to the permits. He said Albany would take us to the point where we would redesign the raw water intake and are prepared to bid. Killin said he just wants to be fair to Millersburg and maybe the point of completion issue is not really fair to them. He said maybe we are not paying enough of it at that point. Konopa said she would like to see how the 1.4 million that Millersburg has paid is broken down such as cost for design, permitting, for the intake and pump station. Konopa said whatever costs above that to construct would be Albany's share. Killin said that he sees that as riding on their dollars, they have done it all for us. Reid said some of it. The councils agreed to (B5) with some refinement based on a breakdown of actual expenditures by Millersburg.

6. A management committee would provide general governance over any joint water facilities. The management committee would be made up of an equal number of members from each city. The roles and responsibilities of the management committee would include policy direction, management oversight, dispute resolution and related actions necessary to meet the joint water supply objectives of each community. The councils agreed to (B6).
7. Both communities concur that Albany is the logical party at this time to provide operation and maintenance of joint water facilities. If Albany accepts this role, both communities agree to periodically assess the quality and competitiveness of the services provided and to consider other options that may exist to provide the highest quality water at the lowest possible price to each community. Both councils agreed to (B7).
8. The costs for the O&M of any joint water facilities would be shared based on the amount of water consumed, consistent with "cost of service" principles for cost allocations. Both communities would be charged direct costs only (no markups) for water supplied. Both councils agreed to (B8).
9. In the interim period over the next 4-5 years, until a joint water project could be implemented, Albany would:
 - a. Continue Millersburg's water service agreement. Both councils agreed to (B9)(a).
 - b. Make modifications to the existing piping system at the existing water meter location to improve system flow and pressure for Millersburg. Both councils agreed to (B9)(b).
 - c. Consider options to offset the debt service on Millersburg's existing loan with OECD that will be incurred during the extended project implementation period. Both councils agreed to (B9)c.

Lasswell asked if anything has been left out of the Governance portion. The Councils agreed it was pretty complete and not complicated.

Consistent with the joint councils agreement to continue to pursue at least joint water intake and pumping, the councils agreed to authorize staff to jointly approach various permitting agencies regarding a Joint Albany-Millersburg Water Project. The agencies may include National Marine Fisheries, Army Corp of Engineers, Water Resource Department, Oregon Economic Community Development, 1000 Friends, Linn County, and the Governors Community Solution Team

The councils agreed to continue to invest in this and take the next 30-90 days to do this.

Mayor Wood discussed the legal implications that have been going on between Albany and Millersburg. He said that we have held off on the findings so Albany would have time to make an appeal if we couldn't get together. He said the time was behind us now. Wood said Millersburg doesn't need the property now because we have land downstream. We have moved past that time. Wood said we should get this up to LUBA to see if we can use the Scrael Hill site or not. Right now we are dealing with uncertainties, and we are spending a lot of time talking about a maybe.

Lasswell suggested that you consider a strategy with these groups for the joint project, and see if it might help to secure that site even if it is just for your storage. Lasswell said think about it before you charge up to force a decision.

Forrest Reid, Millersburg City Attorney said that once we have the findings made by Linn County, then we wait to see if anyone will appeal the findings. He said it would be up to Albany or the Friends of Linn County to appeal it, and if they don't appeal it, then we can go ahead with the site. He said if

they do appeal the findings, they have to make that decision within thirty days of the findings being made down here. He said it could get dragged out for 6 - 9 months. Wood said he just thought the sooner we would work on it, the sooner we would know if we had it or not. Attorney Reid said it would put Albany on the spot. He said are they going to appeal it and perhaps argue against themselves in a spot where they may eventually want to locate something on.

The councils discussed applying for a zone change for the Scrael Hill site. Attorney Reid said it would be easier to try to obtain a zone change if we had both cities applying for it.

Jim Delapoer, Albany City Attorney, suggested getting Clark Balfour, an attorney who has drawn up the Intergovernmental Agreements (IGA'S) for water systems before, working on an IGA that will deal with the water intake and pump station components. In the next 60-90 days, while Balfour can be working up drafts of this phase, our councils can be working on the details of the parts where we are in agreement. Once we have those, then we can know quickly whether or not joint treatment would work. In the meantime, we can be moving full speed ahead on the NMFS permit so none of the time would be wasted. If joint treatment fell apart, we haven't lost the progress we have made on the first two components.

Bryant suggested funneling the information to the councils by going through the mayors. Lasswell said his goal would be to have a strategy meeting next week to determine the best way to approach the agencies so we can have the highest probability of achieving our objectives. He said we will keep you up to date on how those are going with periodic reports through the mayors and the council. He said if we get to a point where we need to make a fast decision, because an opportunity or issue arises or we need to start sorting drafts of agreement, then we will schedule another joint council meeting. The meeting on November 1st that was tentatively scheduled was cancelled.

Lasswell will draft a press release regarding the results of this meeting.

Mayor McLaran thanked Mark Lasswell for all of the work he has done.

The meeting adjourned at 9:25 p.m.

Respectfully submitted,

Barbara Castillo
Millersburg City Recorder