

RESOLUTION NO. 5464

A RESOLUTION ADOPTING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF ALBANY AND THE CITY OF MILLERSBURG FOR OPERATION AND MAINTENANCE OF WASTEWATER COLLECTION FACILITIES.

WHEREAS, the city of Millersburg owns and performs certain operational and maintenance activities on their own wastewater collection system; and

WHEREAS, upon commissioning of the Expanded Davidson Street Wastewater Treatment Plant, the two communities will jointly own the treatment plant, as defined in the Intergovernmental Agreement for Wastewater Treatment Facilities; and

WHEREAS, Albany will operate and maintain the Expanded Davidson Street Wastewater Treatment Plant in compliance with the National Pollution Discharge Elimination System (NPDES) waste discharge permit; and

WHEREAS, both parties recognize Albany is authorized by the Oregon Department of Environmental Quality (hereafter referred to as the DEQ) to implement and enforce an industrial pretreatment program to control industrial waste under 40 CFR Part 403; and

WHEREAS, both parties recognize the need to comply with the DEQ's requirements with respect to the form and substance of this Intergovernmental Agreement; and

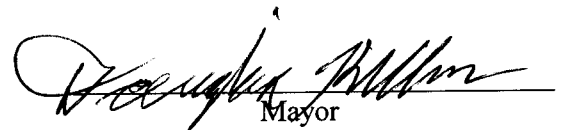
WHEREAS, Millersburg desires to contract with Albany for specific maintenance functions to be routinely performed for Millersburg on the wastewater collection system they own; and

WHEREAS, this Agreement shall become effective upon commissioning of the Davidson Street Wastewater Treatment Plant Expansion, estimated to be July 1, 2009; and

WHEREAS, prior to the Agreement effective date, the current Intergovernmental Sanitary Sewer Service Agreement executed on December 18, 1996, shall remain in full force.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS CONTAINED HEREIN, THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF ALBANY AND THE CITY OF MILLERSBURG IS ADOPTED BY THIS RESOLUTION.

DATED AND EFFECTIVE THIS 8TH DAY OF AUGUST 2007.


Mayor

ATTEST


City Clerk

INTERGOVERNMENTAL AGREEMENT
for
WASTEWATER COLLECTION SYSTEM OPERATION AND MAINTENANCE

THIS AGREEMENT is made and entered into by and between the CITY of ALBANY, a municipal corporation, hereinafter referred to as "Albany," and the CITY of MILLERSBURG, a municipal corporation, hereinafter referred to as "Millersburg." The Agreement was authorized by Albany City Council on August 8, 2007, and Millersburg City Council on August 14, 2007.

The purpose of this agreement is to terminate the previous agreement titled "Intergovernmental Sanitary Sewer Service Agreement" executed on December 18, 1996, between the City of Albany and City of Millersburg adopted by Albany Resolution No. 3727, whereby the City of Albany contracted to operate and maintain the City of Millersburg's public wastewater facilities. This new agreement defines the provisions for the City of Albany to provide maintenance services for the City of Millersburg's public wastewater collection system as specifically provided in the agreement.

W I T N E S S E T H:

WHEREAS, Millersburg owns and performs certain operational and maintenance activities on their own wastewater collection system; and

WHEREAS, upon commissioning of the Expanded Davidson Street Wastewater Treatment Plant, the two communities will jointly own the treatment plant, as defined in the Intergovernmental Agreement for Wastewater Treatment Facilities; and

WHEREAS, Albany will operate and maintain the Expanded Davidson Street Wastewater Treatment Plant in compliance with the National Pollution Discharge Elimination System (NPDES) waste discharge permit; and

WHEREAS, both parties recognize Albany is authorized by the Oregon Department of Environmental Quality (hereafter referred to as the DEQ) to implement and enforce an industrial pretreatment program to control industrial waste under 40 CFR Part 403; and

WHEREAS, both parties recognize the need to comply with the DEQ's requirements with respect to the form and substance of this Intergovernmental Agreement; and

WHEREAS, Millersburg desires to contract with Albany for specific maintenance functions to be routinely performed for Millersburg on the wastewater collection system they own; and

WHEREAS, this Agreement shall become effective upon commissioning of the Davidson Street Wastewater Treatment Plant Expansion, estimated to be July 1, 2009. Prior to this date, the current Intergovernmental Sanitary Sewer Service Agreement executed on December 18, 1996, shall remain in full force.

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **DEFINITIONS** (many of the following definitions are duplicated from federal and state pretreatment program definitions for consistency with regulatory requirements)
 - a. **BIOCHEMICAL OXYGEN DEMAND**, hereinafter *BOD*: The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at a

temperature of 20 degrees C, expressed in terms of weight and concentration, typically milligrams per liter (mg/L).

- b. **COMMERCIAL USER:** Any person who contributes, causes, or permits the contribution of wastewater into publicly-owned treatment works, which by nature of the services rendered is of a dissimilar volume or chemical makeup than that of a domestic user. Examples of commercial users include, but are not limited to, restaurants, grocery stores, and car washes.
- c. **DISCHARGE:** The discharge or introduction of pollutants into the municipal wastewater treatment system from any nondomestic user.
- d. **DOMESTIC SEWAGE OR DOMESTIC WASTE:** The liquid and waterborne wastes derived from the ordinary living processes, free from industrial wastes, and of such character as to permit satisfactory disposal, without special treatment, into the public sewer or by means of a private sewage disposal system.
- e. **ENGINEER:** For Albany, its Public Works Director or designee; for Millersburg, its designee.
- f. **FEDERAL AND STATE REGULATIONS:** Federal and state regulations specifically incorporated herein by that Reference: U.S. GOVERNMENT - 40 CFR. 35, and 40 CFR. 403; STATE OF OREGON - ORS 454.020, 454.030, 454.040, 454.225, and 468B.035 or subsequent regulations pertaining to wastewater treatment and processes as may be enacted by the federal or state governments.
- g. **INDUSTRIAL USER:** Any person that discharges wastewater that is not domestic waste.
- h. **INDUSTRIAL WASTE:** Solid, liquid, or gaseous waste resulting from any industrial, manufacturing, trade, or business process, or from the development, recovery, or processing of natural resources.
- i. **INFILTRATION AND INFLOW, hereinafter I/I:** The total quantity of wastewater entering the sanitary sewer system from direct and indirect storm wastewater connections. Infiltration is groundwater entering the sewer system through various means, including, but not limited to, defective pipes, pipe joints, sewer service connections, and manhole walls. Inflow is storm wastewater or other clean wastewater discharged to the sewer system through direct connections, roof and area drains, foundation drains, cooling devices, manhole covers, catch basins, and cross-connections from storm sewers.
- j. **NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT, hereinafter NPDES permit:** The permit required of all dischargers to public waterways, setting forth the requirements and limitations on discharge, issued by, and on file with, Department of Environmental Quality, hereinafter DEQ.
- k. **PERSON:** Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity or their legal representative, agents, or assigns. The masculine gender shall include the feminine; the singular shall include the plural where indicated by the context.
- l. **PUBLIC SANITARY SEWER:** Sanitary sewers constructed in easements or rights-of-way that have been accepted as public facilities by Millersburg, and which, after the effective date of this Agreement, have been constructed in accordance with Albany's *Standard Construction Specifications*. Sanitary sewer service laterals from a user's plumbing facilities to public rights of way are private improvements. Repairs and maintenance of these service laterals are specifically excluded from the scope of services provided through this agreement.

- m. **SERVICE LATERAL:** Any pipe on private property. Any section of pipe within public rights of way or public easement shall be considered part of the public sanitary sewer system.
- n. **STATE DEPARTMENT OF ENVIRONMENTAL QUALITY, hereinafter DEQ:** The state agency responsible for issuing and enforcing NPDES permits.
- o. **TOTAL SUSPENDED SOLIDS, hereinafter TSS:** The total suspended matter that floats on the surface of, or is suspended in water, wastewater, or other liquids that is removable by laboratory filtering.
- p. **WASTEWATER TREATMENT PLANT:** The Davidson Street Wastewater Treatment Plant.
- q. **WET WEATHER FLOW:** The volume of sanitary sewage, typically measured in million gallons, for the period between October 1 of one year through March 31 of the following year.

2. ADOPTION OF ALBANY SEWER USE ORDINANCE

- a. Albany Ordinance No. 5637, dated January 25, 2006, as amended and insofar as applicable herein, and not in conflict with the provisions of the Agreement, are hereby incorporated by reference and made a part of this Agreement

3. INDUSTRIAL PRETREATMENT

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

Any authorized officer or employee of Albany is granted the right to enter property or inspect industries located within Millersburg's jurisdiction in accordance with the provisions of Albany's most recent Sewer Use Ordinance. This includes the right to sample, measure, or test waste discharges from any industrial user discharging to the Millersburg sanitary sewer system. Millersburg further agrees to enact such ordinances as may be necessary to give effect to this Agreement.

- c. **MINIMUM PRETREATMENT STANDARDS:** Millersburg agrees to adopt, and update as needed, a sewer use ordinance that is no less stringent and is at least as broad in scope as Albany's Sewer Use Ordinance. Millersburg will adopt and update their Sewer Use Ordinance in accordance with this requirement within 180 calendar days of written notice that Albany has amended its sewer use ordinance.
- d. **PERIODIC REVIEW:** Albany and Millersburg agree to periodically review their respective ordinances and jointly adopt equivalent amendments to their respective ordinances when deemed necessary for effective administration and operation of the pretreatment program. Such a review

shall be conducted no less than once every five (5) years; however, either party, or DEQ, may request a joint review whenever deemed necessary.

- e. **PUBLICATION OF LOCAL LIMITS:** Albany agrees to publish local limits for Millersburg concurrent with Albany's publication of local limits and to include the pollutant parameters that are at least as stringent as the local limits published for Albany. When revisions or additions are made to Albany's local limits, Albany will immediately notify Millersburg. For purposes of this Agreement, immediate notification means forwarding a copy of any revisions or additions made to Albany's local limits within sixty (60) business days of receiving written notice.
- f. **DESIGNATION/ACCEPTANCE OF ENFORCEMENT AUTHORITY:** Millersburg hereby designates Albany as its agent for the purpose of implementation and enforcement of Millersburg's ordinance for users located in Millersburg. Albany hereby accepts the designation as Millersburg's agent for purpose of implementation and enforcement of Millersburg's Ordinance and Millersburg agrees to adopt Albany's Ordinance language so as to make all Ordinance provisions applicable in Millersburg.
- g. **TECHNICAL/ADMINISTRATIVE DUTIES:** Albany, on behalf of and as agent for Millersburg, agrees to perform technical and administrative duties necessary to implement and enforce Millersburg's ordinance, including, but not limited to, the following: (1) updating industrial waste survey; (2) providing technical services, such as sampling and analysis; (3) permitting; (4) conducting inspection and compliance monitoring; and (5) performing enforcement activities. In addition, Albany is authorized, as an agent of Millersburg, to stop or prevent any discharge which presents or may present an imminent danger to the health and welfare of humans, which reasonably appears to threaten the environment, or which threatens to interfere with the operation of the Wastewater Treatment Plant.

4. COVENANTS OF ALBANY

- a. Albany will document and maintain accurate records for all of the services provided and listed herein. Albany will perform the following basic services on an as requested basis subject to the Charges and Rates identified in *Section 6* of this Agreement.
 - (1) **PUBLIC SANITARY SEWER CLEANING AND INSPECTION:** Albany shall clean Millersburg's public sanitary sewers on an appropriate cycle as agreed to by both parties.
 - (2) **UTILITY LOCATES:** Albany shall provide utility location services for Millersburg's public sanitary sewer system on an as requested basis.
 - (3) **REPAIR SEWER PIPING AND MANHOLES:** Albany shall repair Millersburg's public sanitary sewer collection system and sewer laterals in the public right of way on an as needed basis.
 - (4) **AIR. RELIEF VALVE INSPECTION:** Albany shall inspect air relief valves on force mains quarterly.
 - (5) **CUSTOMER RESPONSE:** Albany shall provide customer services, including responding to customer inquiries and service concerns.
 - (6) **ROUTINE PUMP STATION INSPECTION:** Albany shall inspect Millersburg's lift stations on a weekly basis and provide routine maintenance as needed. Routine maintenance shall include regular inspection of telemetry equipment, pump and motor controls, cooling, lubrication, and ventilation equipment. Albany shall maintain a log of all inspection findings and weekly pump run times.

- (7) **MONITORING:** Albany shall monitor wet well alarms, pump and motor cycling, and related information through telemetry at each lift station communicating with the Wastewater Treatment Plant.
 - (8) **EMERGENCY MAINTENANCE:** Albany shall respond to emergencies at Millersburg's lift stations, complete emergency repairs, and notify Millersburg of any recommended improvements and/or maintenance needs that exceed routine repairs.
 - (9) **WET WELL CLEANING:** Albany shall spray wash wet wells for each of Millersburg's lift stations annually.
 - (10) **REGULATORY COORDINATION AND LIABILITY:** Albany shall report to DEQ mechanical power or other problems resulting in sewage overflows. Albany shall maintain records of overflow events and be responsible for public notification as required. Albany shall not assume liability, including fines and/or other regulatory enforcement actions imposed by DEQ or third parties for overflows from Millersburg's lift stations or public sanitary sewer system that result from actions or events beyond Albany's control.
 - (11) **INDUSTRIAL PRETREATMENT PERMIT:** Albany will issue wastewater discharge permits to industrial users as applicable under the pretreatment program, including all significant industrial users. Significant industrial users will be determined based on Albany's user classification and federal categorical pretreatment standards. Permitting will include plan review of pretreatment processes, flow monitoring and sampling equipment, and related facilities.
 - (12) **PRETREATMENT PLAN REVIEW:** Albany will be provided the opportunity to perform pretreatment plan review on building permit applications, plan submittals, and plumbing remodel plans for commercial or industrial facilities under the notification procedure referenced in 5.g of this Agreement.
 - (13) **PRETREATMENT INSPECTION:** Albany will inspect industries as needed under the pretreatment program, including pretreatment process equipment, storage and containment areas, and related pretreatment facilities. Written inspection reports will be filed with Albany's pretreatment program. Albany will also periodically review compliance reports, including sample data, and continuous pH charts (if required) for compliance with permit limits.
 - (14) **PRETREATMENT ENFORCEMENT AUTHORITY:** Albany is authorized to take such enforcement action directly against offending dischargers located within Millersburg as outlined in Albany's Enforcement Response Plan under the Albany Municipal Code, pursuant to 40 CFR 403.8(f)(1)(vi). In the event Albany takes such enforcement action, it shall notify Millersburg concerning the nature of the violation and the enforcement action.
 - (15) **ENFORCEMENT:** Albany will investigate noncompliance and will issue notices of violation and initiate other appropriate enforcement as outlined in Albany's Enforcement Response Plan under the Albany Municipal Code.
- b. Albany may provide the following additional services upon request by Millersburg:
- (1) Site improvement (SI) plan review and on-site inspections for private development subject to the Charges and Rates in Section 6 of this Agreement. Albany shall provide SI plan review services to projects sponsored by the City of Millersburg at no cost.
 - (2) Geographic Information System (GIS) mapping services subject to the Charges and Rates in *Section 6* of this Agreement.

- c. Albany shall not be required to perform the following services under this agreement:
 - (1) The planning, design, or project administration of any new wastewater collection or pumping facilities in Millersburg.
 - (2) Utility billing services including customer billing, collections, or any customer service related to billing.
 - (3) Relocate any wastewater lines or services within Millersburg.
 - (4) Perform any other services or responsibilities not expressly delineated in this agreement.
- d. Nothing shall prevent Albany and Millersburg from agreeing to perform any of the above “non-required” services if a future amendment or agreement is entered into specifically and signed by both parties.

5. COVENANTS OF MILLERSBURG

- a. Millersburg shall designate an authorized representative to represent the City of Millersburg when operational decisions that affect water quality and regulatory compliance arise.
 - (1) Millersburg shall provide the name, telephone number, and address for their authorized representative to be on record with the Albany Public Works Operations office located at 310 Waverly Drive NE, Albany, OR 97321.
 - (2) Millersburg will ensure that the authorized representative is available to be contacted and will respond in a timely manner to make operational decisions for Millersburg.
- b. Millersburg will process new connections to existing lines and collect any fees associated with the installation. Millersburg will issue permits for connection of private sanitary sewers to Millersburg’s public sewer system. Millersburg shall coordinate scheduling inspection of service tap connections with Albany, and shall provide sufficient records to include connection locations on Albany’s Geographic Information System.
- c. To facilitate maintenance and responding to the One-Call system for the Millersburg wastewater collection system, Millersburg will provide Albany with both digital (AutoCAD) and reproducible Mylar-type construction drawings (“as-builts”) for all wastewater collection facilities constructed in Millersburg after the date of this agreement.
- d. Millersburg agrees to meet I/I reduction requirements as identified in Albany’s NPDES permit, including compliance actions and/orders. I/I reduction efforts shall include, but not be limited to, funding costs for source detection, separation of storm wastewater from the sanitary sewer system, improvements to Millersburg’s sanitary sewer collection system, and adoption of ordinances and policies needed to effectively identify and reduce I/I.
- e. All power and wastewater expenses for lift stations shall be Millersburg’s responsibility and are specifically excluded from the scope of service Albany will provide.
- f. Millersburg will provide design, planning, project administration, review, approval, inspection, and/or acceptance of any new public sanitary sewer, other than those review and acceptance procedures included with the SI permit process.
- g. Upon receipt of any building permit applications, plan submittals, or plumbing remodel plans for commercial or industrial facilities, Millersburg will notify Albany’s Public Works Environmental Services office prior to approval, in order to facilitate pretreatment plan review by Albany.

Albany will have the opportunity to schedule and review plans within a timeline of fifteen (15) working days, with the exception of complex facilities needing longer review time.

6. CHARGES AND RATES

- a. Except as otherwise provided herein, the charges for services shall be billed based on an itemized time and materials costs basis.
- b. Labor will be based on the current fiscal year (July 1 through June 30) based on the standard burdened labor billing rates established by the City of Albany for internal cost tracking. There shall be no additional component for profit or return-on-investment added to the standard rates that the City of Albany charges itself.
 - (1) Unless itemized separately, the labor rate will be a blended rate that includes the costs of labor, overhead, equipment, tools, incidental supplies, and other indirect cost items as may be specified in the rate definitions.
 - (2) Overtime and call-out charges will be billed at the established rate multiples, and/or minimum charges for city operations as defined in adopted City of Albany compensation plans and/or negotiated labor contracts.
 - (3) Materials provided by the City of Albany will be billed at the established inventory value, including an overhead/indirect cost factor.
 - (4) Specialized equipment or outside professional services provided by the City of Albany will be billed at cost plus the established overhead factor.
 - (5) Materials, specialized equipment or professional services billed directly to the City of Millersburg will be paid at actual billed cost by the City of Millersburg.
- c. Millersburg will be billed monthly by Albany for the provision of basic and additional services, and agrees to pay the bill within 30 days.
- d. *Exhibit 1* to this contract enumerates specific rates and charges from the work units providing the services requested. Both parties will review and update the labor rates and any other charges as may be appropriate beginning in February of each year for charges to commence July 1 of that same year. These annual changes shall be adopted by mutual consent without need to formally amend this contract.

7. TERM

- a. This agreement begins upon the commissioning of the Davidson Street Wastewater Treatment Plant and will remain in effect unless amended or cancelled by either party. Cancellation shall only occur at the end of a fiscal year after 180-day written notice has been received by either party.
- b. In the event of cancellation, Millersburg's right to discharge wastewater to the Davidson Street Wastewater Treatment Plant is conditioned upon compliance with all regulations, conditions and requirements, including NPDES permit requirements, that apply to wastewater discharged from Albany customers to the Davidson Street Wastewater Treatment Plant

8. STANDARD OF CONSTRUCTION

- a. All wastewater facilities constructed in Millersburg shall be constructed in accordance with the City of Albany *Standard Construction Specifications and Design Standards*, except when Albany is specifically notified by Millersburg of specific substitutions or modifications. Any changes in equipment or materials that are different from Albany's may require special stocking of spare parts or materials or tools for the benefit of providing maintenance services to Millersburg. The cost of purchasing or stocking of specialty spare parts or materials or tools shall be born by Millersburg upon mutual agreement.

9. ADDITIONAL AGREEMENTS

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

10. EMERGENCY RESPONSE

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

11. RELEASE OF CLAIM

- a. Albany shall not be liable for, and Millersburg shall indemnify Albany from, any claims for not providing any wastewater system operation and maintenance services should the cause for diminished or denied service be the result of:
 - (1) Any labor dispute or strike.
 - (2) Any act of God or other force majeure.
 - (3) Any change in federal or state law that may prohibit, or in any way limit, Albany's existing ability to provide service.
 - (4) Any other circumstance which may prohibit Albany from providing services that is the result of any action beyond Albany's control.

12. SEVERABILITY

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

13. HEIRS AND ASSIGNEES

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

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

DATED this ____ day of _____ 2007.

CITY OF MILLERSBURG:

CITY OF ALBANY:

Clayton Wood, Mayor

Diane Taniguchi-Dennis, P.E., Public Works Director

ATTEST:

ATTEST:

Barbara Castillo, City Administrator/Recorder

Betty Langwell, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Forrest Reid, Millersburg City Attorney

James Delapoer, Albany City Attorney

Exhibit 1

Labor rates, direct and indirect expenses, overhead charges and other costs for all services provided under this Agreement shall be determined prior to the effective date of the Agreement and included herein by Amendment.