

RESOLUTION NO. 6651

A RESOLUTION AUTHORIZATING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF LEBANON FOR EMERGENCY BIOSOLIDS HAULING.

WHEREAS, Albany, Millersburg, and Lebanon are Municipal Corporations of the State of Oregon; and

WHEREAS, Albany and Millersburg own and Albany operates the Albany-Millersburg Water Reclamation Facility (WRF); and

WHEREAS, Lebanon owns the Lebanon Wastewater Treatment Plant (WWTP); and

WHEREAS, the Lebanon WWTP is operated and maintained by a contractor; and

WHEREAS, Lebanon may have a need to transport excess WWTP solids during the winter of 2017-2018; and

WHEREAS, Albany has available capacity at the WRF to accept a limited quantity of Lebanon's excess WWTP solids; and

WHEREAS, Albany, Millersburg, and Lebanon are units of local government, authorized under ORS 190.010 to enter into written intergovernmental agreements for the performance of specified activities; and

WHEREAS, the newly negotiated intergovernmental agreements call for adoption of the agreements by resolution of each respective City Council.

NOW, THEREFORE, BE IT RESOLVED that the Albany City Council hereby authorizes the Mayor and City Manager to execute the attached intergovernmental agreement with the City of Lebanon, provided as Exhibit 1.

DATED AND EFFECTIVE THIS 6TH DAY OF DECEMBER 2017.



Mayor

ATTEST:




City Clerk

EMERGENCY BIOSOLIDS HAULING AGREEMENT

THIS AGREEMENT is made and entered into on this ____ day of _____ 2017, by and between the CITY of ALBANY, a Municipal Corporation, hereinafter referred to as “Albany,” the CITY of MILLERSBURG, a Municipal Corporation, hereinafter referred to “Millersburg,” and the CITY of LEBANON, a Municipal Corporation, hereinafter referred to as “Lebanon.”

RECITALS

WHEREAS, Albany, Millersburg, and Lebanon are Municipal Corporations of the State of Oregon; and

WHEREAS, Albany and Millersburg own and Albany operates the Albany-Millersburg Water Reclamation Facility (WRF); and

WHEREAS, Lebanon owns the Lebanon Wastewater Treatment Plant (WWTP); and

WHEREAS, The Lebanon WWTP is operated and maintained by a contractor; and

WHEREAS, Lebanon may have a need to transport excess WWTP solids during the winter of 2017-2018; and

WHEREAS, Albany has available capacity at the WRF to accept a limited quantity of Lebanon’s excess WWTP solids; and

WHEREAS, Albany, Millersburg, and Lebanon are units of local government, authorized under ORS 190.010 to enter into written intergovernmental agreements for the performance of specified activities.

NOW, THEREFORE, the Parties agree as follows:

1. Background

- 1.1 Lebanon’s WWTP produces a Class B biosolids with an average solids content of between two and four percent.
- 1.2 In the winters of 2015-2016 and 2016-2017, Lebanon had to make unplanned emergency arrangements to remove solids from their WWTP due to solids overloading within the plant. Making arrangements to dispose of large quantities of biosolids during the winter months is complicated and expensive if prior planning has not been done.
- 1.3 Albany’s WRF has a well established procedure whereby wastewater treatment plant solids from the WRF are dewatered and hauled to the Coffin Butte landfill.
- 1.4 Capacity exists within the Albany WRF to accept a limited quantity of wastewater treatment plant solids from the Lebanon WWTP without negatively impacting WRF performance or landfill disposal of Albany’s treatment plant solids.

2. Covenants of Lebanon

- 2.1 Lebanon shall pay for testing and other requirements necessary to gain approval from the Coffin Butte landfill for disposal of their WWTP solids prior to delivering any WWTP solids to the WRF.
- 2.2 Lebanon, or its contract operator, shall notify Albany at least 7 days prior to delivering WWTP solids to the WRF.

- 2.3 Lebanon shall deliver WWTP solids in quantities not to exceed 75,000 gallons per calendar week. Total solids delivered to the WRF shall not exceed 500,000 gallons or 65 dry tons, whichever is met first, for the duration of this Agreement.
- 2.4 Lebanon, or its contract operator, shall test the solids percentage in each load to be delivered to the WRF. Test results will be sent to Albany WRF staff weekly and be accurate to at least one-tenth of a percentage.
- 2.5 Lebanon, or its contract operator, shall provide all staff and equipment necessary to deliver the WWTP solids to the designated WRF receiving tank.
- 2.6 Lebanon may allow Albany staff to coordinate directly with the contract operator of the Lebanon WWTP for scheduling, testing, and delivery of solids to the Albany WRF.
- 2.7 Lebanon shall pay Albany for handling and disposal of the delivered WWTP solids according to the terms of Section 4 of this Agreement.

3. Covenants of Albany

- 3.1 Albany shall arrange for testing of the Albany/Lebanon sludge cake mix and submit results to Republic Services for final landfill approval.
- 3.2 Albany shall reasonably maintain capacity within the WRF for the acceptance of Lebanon WWTP solids delivered according to the terms of this Agreement; however, Albany may refuse to accept solids due to any of the following: odor issues, excessive solids backup (cake or liquid), equipment breakdown, or if the Coffin Butte landfill refuses to accept solids.
- 3.3 Albany shall not unreasonably delay the delivery of solids from the Lebanon WWTP.
- 3.4 Albany shall process and dispose of the Lebanon WWTP solids in accordance with the permits and requirements of Republic Services and the Coffin Butte landfill.
- 3.5 Albany shall maintain records of the volume and percent of solids delivered to the WRF and shall prepare a quarterly invoice to Lebanon according to the terms of Section 4 of this Agreement.

4. Charge for Service

- 4.1 Lebanon agrees to pay \$600 per dry ton of solids delivered to the Albany WRF. The dry tonnage will be calculated per load based on total gallons and the percent of solids for each load delivered.
- 4.2 Albany will invoice Lebanon for payments required per this Agreement monthly. Lebanon agrees to pay all amounts owed by the dates shown, unless otherwise agreed to in writing by both parties. Any late payment shall bear interest at three (3) percent per annum if not paid within 30 days of invoice. Interest shall accrue automatically without written notice from Albany. Unless otherwise requested by the City of Albany, payments shall be submitted to:

City of Albany Public Works Department
Attention: Jeff Babbitt
333 Broadalbin Street SW
PO Box 490
Albany, OR 97321-0144

5. **Indemnification**: Each Party agrees to indemnify and hold the other Party and its agents harmless from any governmental or third party claims or damages, including costs of defense and mitigation, resulting, or claimed to result, in any manner from the indemnifying Party's acts or omissions in violation of the terms of this Agreement.
6. **Modification**: All modifications to the Agreement must be approved in writing by both cities' governing bodies.
7. **Term and Termination**: The term of this Agreement is one (1) year.
8. **Good Faith**: With regard to their respective obligations and commitments under this Agreement, each party covenants that it shall act in good faith and deal fairly with the other party.
9. **Dispute Resolution**: It is the intent of the Parties to limit the issues available for dispute resolution. The issues raised must be related to interpretation of the express terms of this Agreement and the enforcement thereof and/or damages for breach. Disputes shall first be subject to mediation followed by binding arbitration. Either party may initiate the mediation/arbitration process by providing written notice to the other suggesting the persons proposed to mediate or arbitrate and the procedures and timelines therefore. Should the parties be unable to agree upon these matters, within 30 days of the written demand for mediation/arbitration set forth above, either party may apply to the presiding judge of Linn County for the selection of the mediator and/or arbitrator(s) and the presiding judges selection thereof shall be binding. In such event, the mediator or arbitrator(s) thus selected shall determine the procedures and timelines to be employed and the Parties shall share equally in all dispute resolution costs.
10. **Costs and Attorney Fees**. If suit, action, arbitration, or mediation is instituted to interpret or enforce the terms of this Agreement or with respect to any dispute under this Agreement, the prevailing party is entitled to recover from the other party the sum that the court, arbitrator, or mediator may adjudge reasonable as costs and expert witness and attorney fees in any such proceeding, at trial, on any appeal or petition for review, and in any bankruptcy proceeding (including the adjudication of any issues peculiar to bankruptcy law), in addition to all other sums provided by law.
11. **Compliance with Applicable Law**: The Parties shall comply with all federal, state, and local laws and ordinances applicable to the Agreement, including, without limitation, applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.
12. **Severability**: The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction or authorized regulatory agency to be illegal or in conflict with any law or applicable government regulation, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid or in conflict with regulations. In the event that the invalidation of the term or provision results in the Agreement thereby failing in its essential purpose, the parties may proceed pursuant to law subject to the dispute resolution procedures contained here.
13. **Construction of Contract**: This Agreement shall not be construed against either Party regardless of which Party drafted it. Other than as modified by this Agreement, the applicable rules of contract construction and evidence shall apply.

14. **Waiver:** No provision of this Agreement may be waived except in writing by the Party waiving compliance. No waiver of any provision of this agreement shall constitute waiver of any other provision, whether similar or not, nor shall any one waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.
15. **Resolution:** Both Parties agree to adopt this Agreement by Resolution of its respective City Council.

FOR CITY OF LEBANON:

Paul Aziz, Mayor

Gary B. Marks, City Manager

Approved as to Content:

Ron Whitlatch, Engineering Services Director

Approved as to Form:

John Tre' Kennedy, City Attorney

FOR CITY OF ALBANY:

Sharon Konopa, Mayor

Peter Troedsson, City Manager

Approved as to Content:

Chris Bailey, Public Works Operations Director

Approved as to Form:

Sean Kidd, City Attorney

FOR CITY OF MILLERSBURG:

Jim Lepin, Mayor

Kevin Kreitman, Interim City Manager

Approved as to Form:

Forrest Reid, City Attorney