

RESOLUTION NO. 2951

A RESOLUTION ADOPTING AN INTERGOVERNMENTAL AGREEMENT FOR TRANSFER OF THE NORTH ALBANY COUNTY SERVICE DISTRICT OPERATION AND ASSETS TO THE CITY OF ALBANY.

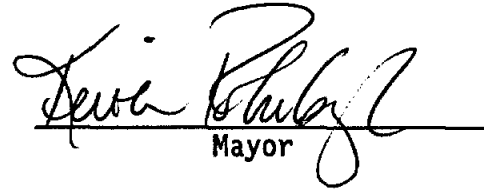
WHEREAS, the City of Albany and Benton County have agreed to an alternative plan to health hazard annexation for a portion of the North Albany area; and

WHEREAS, this alternative plan provides for the transfer of operations and assets of the North Albany County Service District to the City of Albany; and

WHEREAS, an intergovernmental agreement has been proposed setting forth the terms and conditions of the transfer which has been found acceptable to both parties.

NOW, THEREFORE, the Albany City Council does hereby resolve to enter into said agreement as set forth in attached Exhibit A.

Dated this 23rd day of May 1990.



Mayor

ATTEST:



City Recorder

**ALBANY/NACSD SEWER AND WATER MAINTENANCE
TRANSITION PLAN AND MANAGEMENT AGREEMENT**

THIS AGREEMENT is entered into this 23rd day of May, 1990 pursuant to ORS Chapter 190. The Agreement is between the CITY OF ALBANY, an Oregon Municipal Corporation ("City"), and the NORTH ALBANY COUNTY SERVICE DISTRICT ("District"), a county service district created pursuant to ORS Chapter 451 to provide sewer and water service to the North Albany area.

RECITALS

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

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

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

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

WHEREAS, Comprehensive Plan Policies have been adopted requiring that Albany be the provider of water and sewer services within the Urban Growth Boundary, and requiring eventual annexation of the area to the City of Albany,

THEREFORE, THE CITY AND THE DISTRICT AGREE:

I. PURPOSE.

It is the policy of the parties that the City is the logical and appropriate provider of sewer and water services within the North Albany area, and that assumption by the City of such service will provide superior long term service and will encourage the eventual annexation of the Urban Growth Boundary to the City pursuant to the requirements of the City and Benton County Comprehensive Plans. To further this purpose, it is agreed that the City shall be the sole supplier of water and sewer services for the North Albany Urban Growth Boundary, and to areas outside the boundary currently receiving water service from the district. It is the further intent of the parties to transfer sewer and water facilities and operations currently owned and provided by the District to the City in order to implement the Alternative Plan to Health Hazard Annexation. The District shall remain as the taxing and legislative authority for the area within the current boundaries until such time as the parties agree that

dissolution of the District is in the best interest of the citizens or the City chooses to withdraw annexed territory pursuant to state law.

II. TRANSFER OF OPERATIONS.

1. On July 1, 1990, the City shall assume administration, operation and maintenance of the water and sewer systems in North Albany from the District. The City shall assume all rights and responsibilities save those expressly reserved to the District by this agreement. This transfer includes delegation of authority to form local improvement districts and levy special assessments for the purpose of constructing sewer and water facilities.
2. On July 1, 1990, the District shall transfer to the City all funds currently contained in North Albany County Service District accounts, excluding the water bond debt service fund which will continue to be maintained and serviced by the District. The City may expend revenues from time to time to cover the costs of providing the services under this agreement. The District may bill the City and the City shall reimburse the District for the reasonable cost of its remaining administrative duties including insurance, legal costs, changes of District organization, audit costs, etc. Both the City and the District shall be allowed to inspect the records and accounts of the other for the purposes of compiling and completing the Comprehensive Annual Financial Report required by state law.
3. The City shall provide, at a minimum, the water services provided by the District on June 30, 1990. The City agrees to provide water service to all of the current water services customers of the District, including to current customers located outside of the District and outside of the Urban Growth Boundary. However, nothing in this agreement shall be construed to prevent the City from limiting water service when necessary or prudent to manage the water system or water resource (e.g. where rationing is required, where repairs require interruption of service, where a natural disaster affects service, etc.).
4. The District employes providing operation, maintenance, and billing service on June 30, 1990, shall be transferred to the City on July 1, 1990, pursuant to ORS 236.610 to 236.650. Because of the economies of scale, the City and the District recognize that the City will not require the same number or types of employes as the District. The District shall furnish the employment records of the transferred employes to the City at the time of transfer.
5. The North Albany County Service District Advisory Committee (NACSD AC) shall be retained to advise the City and the District. The District Capital Improvement Plan (CIP) and the proposed budget shall be submitted to the NACSD AC each

year for its review and recommendation. In addition, three members from the NACSD AC shall be selected by the District Governing Body to serve on the District Budget Committee appointed pursuant to local budget law.

III. WATER AND SEWER RATES

1. Water Rates: (a) The District agrees to raise its water rates prior to transfer to reflect reasonable costs of operations and systems development. The rates shall be increased as follows:

(A) The base rate for all customers shall be increased by \$2.50 per month, effective July 1, 1990.

(B) The rate for water usage over the minimum 12,000 gallons per month shall be increased to \$.95 per thousand gallons, effective October 1, 1990.

(C) A capital improvement fee of \$5.00 per month shall be charged to each District customer, effective July 1, 1990. Revenue raised by this fee shall be placed by the City into a North Albany Capital Improvement Fund, dedicated to use for capital improvements to the District water system. The base connection fee assessed pursuant to the District Water Operations Ordinance shall also be placed in the North Albany Capital improvement fund.

(b) The City shall continue to charge these rates at time of transfer. Thereafter, changes of the rates provided in subsections (a)(A) and (a)(B) shall be linked to water rate changes enacted by the City for customers within the City limits: The District shall increase or decrease the water rates in subsections (a)(A) and (a)(B) of this section so that annual District revenue from these rates will be increased or decreased by the same percentage as annual City water rate revenue is increased or decreased by water rate changes within the City limits. The City shall provide the District with twenty days notice and opportunity to comment before changing water rates.

(c) Upon annexation to the City of territory currently served by the District, customers in the annexed territory will be charged the same water rates paid by customers located within the City limits.

(d) Pursuant to the District Water Operations Ordinance, customers located outside of the boundaries of the District are charged an additional monthly fee and an additional connection fee assessment in lieu of bond tax payments. The City shall remit revenues raised from these fees to the District, which shall credit such funds to the water bond debt service fund.

2. Sewer rates: Sewer rates will remain the same as they exist on July 1, 1990, until such time as the new North Albany sewer system is constructed pursuant to the alternative plan and begins service. At such time, new sewer rates will be established by mutual agreement.

IV. TRANSFER OF DISTRICT PROPERTY

1. Personal property owned by the District used for the operation and maintenance of the District water and sewer facilities shall be transferred to the City on July 1, 1990.
2. The District shall convey its real property, including all easements and improvements, to the City within six months of the date assessments are levied against benefitted property in North Albany for the construction of the sewer system to alleviate the health hazard. The City and the District recognize that transfer of the water facilities is subject to review and approval by the Farmers Home Administration (FmHA), which issued the installment water bond by which the District acquired the water facilities. The City and the District further recognized that transfer of sewer facilities may also be subject to conditions in the bonding agreement.

V. TERM; AMENDMENT

1. This agreement shall continue until terminated pursuant to subsection (2) of this section, and may only be amended in writing by mutual consent of the parties.
2. As stated above, this agreement is intended to implement the alternative plan to health hazard annexation submitted by the District and the City of Albany on November 13, 1989. If the EQC certifies approval of the alternative plan pursuant to ORS 222.898 (2), then this agreement may only be terminated upon mutual consent of the parties. If the EQC disapproves the alternative plan and terminates proceedings pursuant to ORS 222.898 (4), or if the EQC's approval is reversed or remanded by a court of competent jurisdiction, then this agreement may be terminated by either party with six months written notice to the other. If the agreement is terminated, any and all District assets transferred to the City pursuant to Section IV(2) shall be transferred back to the District, and any and all District Assets transferred to the City pursuant to Section IV(1) that have not been expended or which retain value shall be transferred back to the District.
3. Termination for Breach: (a) In the event that the District fails to discharge any obligation of this agreement, the City may terminate this agreement and discontinue all water service and other obligations incurred herein. Exercise of this remedy by the City shall not require the return of any real or personal property transferred to the City by the District pursuant to Section IV of this agreement. This

remedy is cumulative and in addition to all other remedies available at law or equity.

(b) In the event that the City fails to discharge any obligation of this agreement, the District may terminate this agreement, and any and all District assets transferred to the City pursuant to Section IV(2) shall be transferred back to the District, and any and all District Assets transferred to the City pursuant to Section IV(1) that have not been expended or which retain value shall be transferred back to the District.

VI. MEDIATION

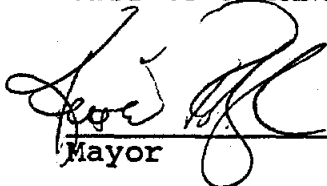
It is the intent of the parties that this agreement will be carried out in good faith and with mutual cooperation. To accomplish this purpose, the parties agree to submit any dispute under this agreement which the parties are unable to resolve to mediation before seeking termination for breach pursuant to Section V(3) or pursuing other legal action to enforce the terms and conditions of this agreement. The mediator shall be selected and shall conduct the mediation pursuant to the rules and regulations of the Oregon State Mediation and Conciliation Service.

VII. NON-SEVERABILITY

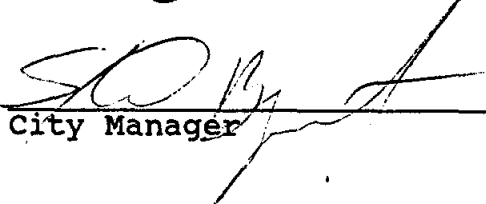
Should it be determined by any court of competent jurisdiction that any portion of this agreement is void as a matter of law, and if such determination prevents any party from discharging its obligations under this agreement, this agreement may be terminated for breach at the option of the party not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

THIS AGREEMENT SHALL BE EFFECTIVE ON JULY 1, 1990.

CITY OF ALBANY

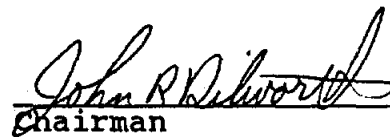


Mayor




City Manager

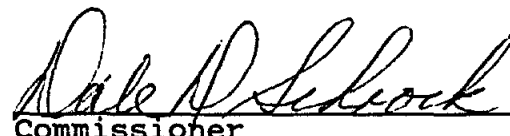
NORTH ALBANY
COUNTY SERVICE DISTRICT



Chairman



Commissioner



Commissioner

Approved As To Form:



Office of County Counsel