

RESOLUTION NO. 5463

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

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

WHEREAS, the development of an expanded and improved Davidson Street Wastewater Treatment Plant is a high priority for both Albany and Millersburg to meet the growth demands of their communities and to comply with environmental regulations; and

WHEREAS, in order to meet their combined full buildout growth, the communities need an estimated 26 million gallons per day (MGD) of maximum month dry weather wastewater treatment capacity for a planned population of 115,800; and

WHEREAS, Albany needs to expand the Davidson Street Wastewater Treatment Plant's capacity and capability by 2010, even if Millersburg is not a service purchaser, to meet consent order requirements issued by the State of Oregon Department of Environmental Quality to bring the system into compliance with State Water Quality Standards; and

WHEREAS, Millersburg desires to secure certainty of sufficient residential, commercial, and industrial wastewater treatment capacity for their community as soon as possible; and

WHEREAS, Millersburg is willing to contribute additional funds to allow Albany to make additional improvements to the Davidson Street Wastewater Treatment Plant in order to add additional capacity to meet Millersburg's treatment needs; and

WHEREAS, this Agreement will create a new joint venture between Albany and Millersburg concerning the expansion of Davidson Street Wastewater Treatment Plant; and

WHEREAS, Albany has a National Pollution Discharge Elimination System (NPDES) permit to discharge treated wastewater to the Willamette River, which was issued by the State of Oregon, acting by and through the Oregon Department of Environmental Quality (DEQ), and Albany will utilize this permit to meet the combined wastewater treatment needs of both communities; and

WHEREAS, the Department of Environmental Quality has issued a Temperature Total Maximum Daily Load (TMDL) for the Willamette River and the cities envision utilizing wetland treatment to comply with this regulation; and

WHEREAS, Albany currently owns and operates its system and Millersburg currently owns and operates a wastewater collection system, the ownership of these existing wastewater collection system facilities will remain separate from the Davidson Street Wastewater Treatment facilities subject to the terms and conditions of this Agreement; and

WHEREAS, Millersburg currently contracts with Albany for wastewater treatment operation and maintenance through an Intergovernmental Sanitary Sewer Service Agreement dated December 18, 1996, adopted by Albany Resolution No. 3727, which will remain in full force and effect until Phase 1 of the Davidson Street Wastewater Treatment Plant expansion and upgrade is fully operational; and

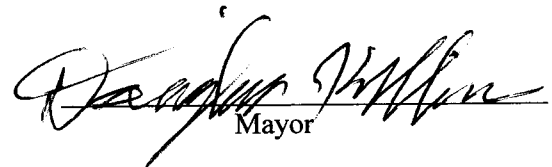
WHEREAS, the Phase 1 upgrade and expansion of the Davidson Street Wastewater Treatment Plant is anticipated to be fully operational on July 1, 2009; and

WHEREAS, the parties intend to terminate the existing Operations and Maintenance Agreement after Phase 1 of the Davidson Street Wastewater Treatment Plant expansion and upgrade is fully operational; and implement a new Wastewater Collection System Operations and Maintenance Agreement; and

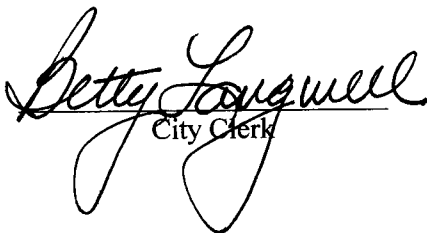
WHEREAS, the parties agree that the opportunity to cooperate in the design, permitting, construction, operation, maintenance, and cost sharing of the expanded Davidson Street Wastewater Treatment Plant and other future wastewater management facilities is mutually beneficial for their communities and that such agreements are authorized under the provisions of ORS Chapter 190.

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 TREATMENT FACILITIES

This Agreement is made and entered into 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 Agreement was authorized by Albany City Council on August 8, 2007, and Millersburg City Council on August 14, 2007.

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 the Davidson Street Wastewater Treatment Plant and future wastewater management facilities that will treat residential, commercial, and industrial wastewater to meet the needs of both communities. The Existing Davidson Street Wastewater Treatment Plant 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 at the Davidson Street Wastewater Treatment Plant, wastewater collection system and other wastewater management facilities within Albany's existing wastewater system (referred to hereinafter as the "System" as defined in Albany Resolution No. 4938).

WITNESSETH

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

WHEREAS, the development of an expanded and improved Davidson Street Wastewater Treatment Plant is a high priority for both Albany and Millersburg to meet the growth demands of their communities and to comply with environmental regulations. In order to meet their combined full buildout growth, the communities need an estimated 26 million gallons per day (MGD) of maximum month dry weather wastewater treatment capacity for a planned population of 115,800; and

WHEREAS, Albany needs to expand the Davidson Street Wastewater Treatment Plant's capacity and capability by 2010, even if Millersburg is not a service purchaser, to meet consent order requirements issued by the State of Oregon Department of Environmental Quality to bring the system into compliance with State Water Quality Standards; and

WHEREAS, Millersburg desires to secure certainty of sufficient residential, commercial, and industrial wastewater treatment capacity for their community as soon as possible; and

WHEREAS, Millersburg is willing to contribute additional funds to allow Albany to make additional improvements to the Davidson Street Wastewater Treatment Plant in order to add additional capacity to meet Millersburg's treatment needs; and

WHEREAS, this Agreement will create a new joint venture between Albany and Millersburg concerning the expansion of Davidson Street Wastewater Treatment Plant; and

WHEREAS, Albany has a National Pollution Discharge Elimination System (NPDES) permit to discharge treated wastewater to the Willamette River, which was issued by the State of Oregon, acting by and through the Oregon Department of Environmental Quality (DEQ), and Albany will utilize this permit to meet the combined wastewater treatment needs of both communities; and

WHEREAS, the Department of Environmental Quality has issued a Temperature Total Maximum Daily Load (TMDL) for the Willamette River and the Cities envision utilizing wetland treatment to comply with this regulation; and

WHEREAS, Albany currently owns and operates its System and Millersburg currently owns and operates a wastewater collection system. The ownership of these existing wastewater collection system facilities will remain separate from the Davidson Street Wastewater Treatment facilities subject to the terms and conditions of this Agreement; and

WHEREAS, Millersburg currently contracts with Albany for wastewater treatment operation and maintenance through an Intergovernmental Sanitary Sewer Service Agreement dated December 18, 1996, and adopted by Albany Resolution No. 3727, that will remain in full force and effect until Phase 1 of the Davidson Street Wastewater Treatment Plant expansion and upgrade is fully operational. The Phase 1 upgrade and expansion of the Davidson Street Wastewater Treatment Plant is anticipated to be fully operational on July 1, 2009. The parties intend to terminate the existing Operations and Maintenance Agreement after Phase 1 of the Davidson Street Wastewater Treatment Plant expansion and upgrade is fully operational, and to implement a new Wastewater Collection System Operations and Maintenance Agreement; and

WHEREAS, the parties agree that the opportunity to cooperate in the design, permitting, construction, operation, maintenance, and cost sharing of the expanded Davidson Street Wastewater Treatment Plant and other future wastewater management facilities is mutually beneficial for their communities and that such agreements are authorized under the provisions of ORS Chapter 190.

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. Davidson Street Wastewater Treatment Plant Description.** The Davidson Street Wastewater Treatment Plant includes existing and new facilities constructed over time to provide the capacity and capability to meet the long-term needs of both communities. Exhibit 1, attached hereto and incorporated by reference, shows the general layout of the Existing Davidson Street Wastewater Treatment Plant (the "Existing Davidson Plant") and planned expansion Phases.

The Existing Davidson Plant is located on the 42.9-acre site accessed from Davidson Street that was acquired by Albany (Exhibit 1). The treatment plant, after the Phase 1 Expansion Project as described in Section 4, will utilize an extended aeration treatment process and will include an expanded influent pump station, a new headworks facility, a new disinfection process and a solids reduction process for biosolids. The treatment plant has been designed to meet current federal and state water quality standards and to accommodate estimated growth in both communities as defined by the loads and capacities shown in Table 4.1. The treatment plant will be constructed in a way that provides for cost-effective and efficient capacity-expansion increments to meet the increasing needs of both communities.

4. Phase 1 Project – Davidson Street Wastewater Treatment Plant Improvements. The Davidson Street Wastewater Treatment Plant improvements will be constructed in phases to meet the growing treatment needs of each community. The following describes the Phase 1 Davidson Street Wastewater Treatment Plant Project improvements (subsequently referred to as the "Phase 1 Project"), including key implementation requirements.

a. **Phase 1 Project Facilities/Improvements.** The Phase 1 Project will include the facilities described below, sized according to the nature of each facility and the initial capacity needs of each community. Phase 1 improvements include:

- Replacement and realignment of the Riverfront Interceptor Sewer within the wastewater treatment plant site,
- Off-site improvements for redundant power supply and utility improvements,
- Construction of improvements to the Influent Pump Station,
- Construction of Headworks Building,
- Construction of Aeration Blower Building,
- Improvements to the Interchange Reactor Blower Building,
- Conversion of existing aeration basins to Interchange Reactors and Aerobic Digesters,
- Construction of solids reduction improvement processes,
- Construction of seven Vertical Loop Reactors (VLRs),
- Construction of three Secondary Clarifiers,
- Construction of a Chlorine Contact Basin,
- Construction of Sodium Hypochlorite Disinfection Facilities,
- Construction of a Flow Control Structure,
- Improvements to the existing Diffuser Structure, and
- Process and control system instrumentation improvements.

b. **Phase 1 Project Capacity and Capacity Allocation.** Phase 1 improvements to the Existing Davidson Plant will be designed to provide hydraulic, organic, and solids treatment capacities as shown in Table 4.1 below. Table 4.1 includes an allocation of flows and loads dedicated to each community based on each community's existing and estimated future needs through approximately 2030.

Table 4.1 - Phase 1 Project Capacity and Capacity Allocation

Phase 1 Capacity	Design Capacity	Albany Capacity Share	Millersburg Capacity Share
Treatment Capacity (in percentage)	100%	90%	10%
Average Dry Weather Flow (MGD)	12.3	11.1	1.2
Maximum Month Wet Weather Flow (MGD)	29	26	3
Peak Wet Weather Flow (MGD)	68	61	7
Maximum Month BOD (lbs per day)	14,600	13,140	1,460
Maximum Month TSS (lbs per day)	19,100	17,190	1,910

Notes:

MGD: Million Gallons per Day

BOD: Biochemical Oxygen Demand

TSS: Total Suspended Solids

lbs per day: Pounds per day

c. **Phase 1 Project Schedule.** The Phase 1 Project will be constructed in an efficient and expeditious manner to bring the new treatment capacity and capability on line as fast and cost-effectively as possible. Both parties will act in good faith to complete their contribution to the Phase 1 Project, including the acquisition of project financing, rate adjustments, and related matters, so that the Phase 1 Project can be completed on the planned schedule.

The following outlines the planned general implementation schedule:

<u>Implementation Element</u>	<u>Target Completion</u>
Milestone A (hydraulic/organic treatment capacity)	November 2008
Milestone B (solids reduction capacity improvements)	August 2009
Full Project Start-up and Operation	November 2009

d. Phase 1 Project Capital Cost Allocation: The estimated total capital cost for the Phase 1 Project is estimated at \$70 million. Both parties agree that the Phase 1 Project capital cost contribution by each party will be based on each party's capacity share, as defined in Table 4.1 Treatment Capacity (in percentage). The preliminary capital cost estimate and allocation for Phase 1 Project costs is \$63 million (90%) for Albany and is \$7 million (10%) for Millersburg as shown in Exhibit 2. This capital cost estimate and cost allocation will be regularly updated as the Phase 1 Project progresses.

The basic cost allocation principles for Phase 1 improvements are modified by the following:

(1) Millersburg agrees to pay Albany for their proportionate share of Phase 1 Project costs based on the treatment capacity share (in percentage) as defined in Table 4.1, according to a mutual defined and acceptable payment schedule and as further discussed in Section 4.e of this Agreement.

(2) The parties acknowledge that as part of the Phase 1 Project, the structure for an additional Vertical Loop Reactor (VLR) is being constructed to allow easier capacity expansion in the near future. An additional investment of approximately \$400,000 (estimated in 2006 dollars) for mechanical, electrical, and other facilities will be required to make the additional VLR basin fully operational. This additional cost will be allocated consistent with cost allocation methodology adopted by both parties for the initial Phase 1 improvements.

(3) The parties further acknowledge that an eighth VLR basin and related mechanical and electrical equipment will be needed to achieve the full treatment capacities shown in Table 4.1. The future addition of this basin will be scheduled as needed to meet both communities' needs and costs for construction of the basin, and related equipment will be allocated consistent with cost allocation methodology adopted by both parties for the initial Phase 1 improvements.

e. Phase 1 Project Payment Schedule. Each party shall be responsible for funding their proportionate share of the Phase 1 Project. Albany has already secured a Clean Water State Revolving Loan Fund (CWSRF) loan for their share. The following outlines the funding plan for Millersburg's 10 percent (10%) share:

(1) Down payment. Millersburg agrees to pay a down payment to Albany in the amount of \$1 million on or before December 1, 2007. Millersburg agrees to pay Albany the balance of its full proportionate share as follows:

(i) \$1 million on October 15, 2009, and

(ii) An additional \$1 million on April 15, 2010.

(2) Thereafter Millersburg agrees to pay to Albany semi-annual debt service payments due January 15th and July 15th of each subsequent year for the remaining balance of their proportionate share of the treatment plant over a 19-year period at the same effective interest rate and administrative fees that Albany pays to the CWSRF Loan.

f. Existing Facilities Capital Cost Allocation: Albany has a substantial investment in its existing System. A portion of the existing wastewater treatment facilities will be used in conjunction with

the Phase 1 Project facilities currently under construction, to produce a complete and fully capable treatment facility. Both parties agree that the capital cost contribution for the Existing Davidson Plant will be based on each party's capacity share or allocation, as defined in Table 4.1, Treatment Capacity (in percentage). Millersburg's share of the Existing Davidson Plant is estimated to be approximately \$1 million.

The basic cost allocation principle for existing facilities is further defined by the following:

(1) The Management Committee will develop a fair and equitable cost methodology to define the asset value of the Existing Davidson Plant, including land.

(2) Millersburg agrees to pay Albany for Millersburg's proportionate share of the Existing Davidson Plant based on Millersburg's share of treatment capacity (in percentage) as defined in Table 4.1, according to a mutually defined and acceptable payment schedule and as further discussed in Section 4.g of this Agreement.

g. Existing Facilities Payment Schedule. Millersburg agrees to pay Albany for Millersburg's proportionate share of the Existing Davidson Plant as determined under Section 4.f and the parties shall negotiate the form and schedule of the payment.

5. Wastewater Treatment Plant Ownership: Each party as part of the joint venture established by this Agreement has a specific undivided ownership interest in the Davidson Plant, such shared ownership includes the Existing Davidson Plant and the Phase 1 Project and is based on capital contributions made under Sections 4.e. and 4.g. except as modified by Sections 6, 7, and 9 of this Agreement.

a. Albany and Millersburg will work with their respective accountants to ensure that each party's proportionate share of the Phase 1 Project assets is accounted for, upon project completion, and reported in each party's accounting and financial reports for the joint venture.

b. Albany will reserve treatment capacity for the sole use of Millersburg upon project completion so long as Millersburg is current in its obligations hereunder, including successful completion of an agreement as to the valuation of Albany's Existing Davidson Plant and Millersburg's proportionate share of these facilities as determined in Sections 4.f and 4.g of this Agreement.

c. Capacity allocations shall be revised based on actual contributions as discussed in Sections 6, 7, and 9 of this Agreement.

6. Future Treatment Plant Expansion Projects. Future expansions are planned to increase the capacity and capability of the plant to accommodate estimated growth in each community and to meet anticipated future regulatory conditions and requirements. These future expansions were developed as part of the June 2005 Wastewater System Improvement Project Definition Report by CH2M-Hill and certain provisions for these future expansions have been incorporated into the current Phase 1 Project. Future plant expansions will be completed as conditions and the parties dictate, in accordance with the terms and conditions of this Agreement. The location and relationship of future planned expansions to the Davidson Street Plant are shown on Exhibit 3.

7. Future Effluent Temperature Management Wetlands Treatment Project. New regulations for the Willamette River require temperature reductions to protect aquatic life. A feasibility study is currently underway for a Wetlands Treatment System solution to cool and polish treated wastewater effluent from the Existing Davidson Plant and the Phase 1 Project (collectively, referred to hereinafter as the "Expanded Davidson Plant") to meet these new regulations and anticipated thermal load limitations. The Wetlands Treatment System will also be constructed in phases to meet regulatory requirements and the growing treatment needs of each community. The following describes the Phase 1 Wetlands Treatment Project improvements (subsequently referred to as the "Phase 1 Wetlands Project"), including key implementation requirements.

a. Ownership of Wetlands Treatment System. The preferred approach to ownership of the Wetlands Treatment System is shared ownership of the facilities in proportion to each party's capacity and capital cost contribution, similar to approach utilized for the wastewater treatment facilities. The cost allocation and ownership provisions of the Phase 1 Wetlands Treatment Project will be incorporated into and made a part of this Agreement after the capacity and cost conditions are defined in greater detail.

b. Phase 1 Wetlands Project Capacity. The initial Wetlands Treatment System will require 4-6 MGD of treated wastewater to be cooled and polished by approximately 40-60 acres of constructed wetlands to meet solely Albany and Millersburg's combined needs. The exact capacity will be refined as the project and conditions are defined in greater detail.

c. Wetlands Treatment System, Capacity Allocation. The exact capacity allocation will be refined as the project and conditions are defined in greater detail.

d. Phase 1 Wetlands Project Schedule. The Phase 1 Wetlands Project will be designed and constructed in an efficient and expeditious manner to bring the wetlands on-line as needed to meet regulatory requirements in a fast and cost-effective manner. Both parties will act in good faith to complete their contribution to the Phase 1 Wetlands Project, including the acquisition of project financing, rate adjustments, and related matters, so that the Project can be completed on the planned schedule.

e. Project Capital Cost Allocation: The estimated total capital cost for the Phase 1 Wetlands Project is \$5-7 million, not including land acquisition costs, to serve Albany and Millersburg. Both parties agree that the Phase 1 Project capital cost contribution by each party will be based on each party's capacity allocation. A preliminary capital cost estimate and cost allocation to each party will be developed and approved by the joint City Councils. This capital cost estimate and cost allocation will be regularly updated as the Phase 1 Wetlands Project progresses.

f. Collaboration with Area Industries: Two existing industries in Millersburg and possibly future industries will be impacted by the same temperature regulations and limitations. Planning conducted to date for the Wetlands Treatment System has been evaluated, including these industries, as part of the Phase 1 Wetlands Project. This planning shows that a combined Albany-Millersburg and industrial wetlands treatment system could be mutually beneficial and more cost effective for all parties. Implementation of the Wetlands Treatment System will continue to consider this combined system as an option and the parties will collaborate together and with the industries to develop the best solution for all parties. The cost to include treatment of industrial wastewater and the land area required for constructed wetlands will be in addition to the amount required to solely meet Albany's and Millersburg's needs and it is intended that the participating industries will pay for these additional costs.

8. Capital Projects Implementation. A variety of capital projects, beyond Phase 1 expansion of the Davidson Plant, future Wetlands Treatment System, or other locations and facilities, will require definition and implementation to accommodate the estimated growth in each community and to comply with regulatory requirements. The following outlines the general conditions and requirements for project definition and implementation.

a. Project Planning: Periodically the parties will update the June 2005 Wastewater System Improvement Project Definition Report by CH2M-Hill or conduct new planning to adequately define the needs of both communities, emerging regulatory requirements, and other factors that will impact the wastewater management needs of both communities. This planning will also define the general scope, schedule, and estimated cost for future wastewater management facilities.

b. Project Manager: The parties agree that the designee of the Albany Public Works Director, currently Chip Ullstad (Albany Utility Engineer), shall be the designated Project Manager for the implementation of the projects described herein with respect to the Phase 1 Project and future projects

related to the Expanded Davidson Plant and the Phase 1 Wetlands Treatment Projects, and future projects related to the Wetlands Treatment System (collectively, 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 judgment 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 quarterly status reports for the Project and prepare such other reports and information as the parties may reasonably require.
 - (6) Take up such actions reasonably necessary during an emergency.
 - (7) 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.
 - (8) 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 and is subject to the purchasing rules of the City that employs the Project Manager. 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 Expanded Davidson Plant, Wetlands Treatment System, and related facilities.
 - (9) 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 management services and required support costs are subject to review and approval by the Management Committee and will be considered an allowable project cost and shared proportionate to the capacity and cost allocation shares of the specific project. 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.
- c. 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 Expanded Davidson Plant, Wetlands Treatment System, and other required wastewater treatment projects.

d. Project Consultant: Albany has retained CH2M Hill as the consulting firm, with 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 Phase 1 Project.

e. Capital Projects Funding. Both parties will secure funding to support each project implementation, as applicable, and the capital cost estimate and allocation defined for each project. As appropriate, both parties will implement rate increases and other measures necessary to secure the required project funding.

(1) Following approval of a preliminary project capital cost estimate and cost allocation for the Wetlands Treatment project and other treatment facility improvements, a cash flow analysis will be developed to outline the most cost-effective utilization of existing and future project funding.

(2) 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 for each project.

(3) 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 quarterly 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. Should a party fail to make the cash contribution required herein and should the other party, as a consequence, pay more than its agreed share, the party not paying its capital share shall have its capacity reduced in proportion to the non-payment. Alternatively, the non-defaulting party may invoke the termination provisions set forth in paragraph 11a.

(4) Change orders, which do not exceed 6 percent (6%) of the original contract amount, shall be within the authority of the Project Manager to execute without review or approval by the Management Committee. The Project Manager shall, however, report all change orders to the Management Committee at their next regularly scheduled meeting. Change orders, which in the aggregate (including previous change orders) exceed 6 percent (6%) of the original contract amount, shall require the prior approval of the Management Committee. Change orders, which exceed the total project budget, shall require prior approval of both parties.

f. Successors of Named Individuals. The Management Committee may, at any time, designate successors of individuals named herein under Section 8.d and must affirm their designations at least annually, based on the voting terms as set out under Section 10.a of this Agreement.

9. Expanded Davidson Plant, Wetlands Treatment System, and Other Facilities' Capacity Management and Expansion. Both parties agree to manage the available capacity and provide additional capacity of wastewater management facilities in an efficient and cost-effective manner, consistent with the following:

a. Existing Capacity Management. The parties agree that use of the Expanded Davidson Plant, future wetlands treatment, or other applicable 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 Expanded Davidson Plant 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 Master Plan or any subsequent Master Plan updates, predesign reports, or related studies. Annually, the Operating Entity will prepare a report for the Management Committee and the parties to review their actual demand as compared to their 20-year demand forecast. Each party may deduct 50 percent (50%) from its surplus to hold as an additional reserve. Based on 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 for expansion or new construction to be completed to provide added treatment capacity. Lease compensation shall be determined by using the Depreciated Replacement Cost value of the portion of the asset over the remaining Book Depreciation Life multiplied by 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 wastewater discharge permit limitations and requirements. 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.

10. Expanded Davidson Plant, Wetlands Treatment System, and Other Facilities Management, Operation, and Maintenance. Both parties agree to contribute to the management, operation, and maintenance of the Expanded Davidson Plant and other applicable wastewater facilities in a manner that promotes high quality, reliable, and cost-effective treatment for each community, in accordance with the following conditions:

a. Water and Wastewater Management Governance. This Agreement consolidates governance provisions of the former Joint Water Project Management Committee, formed by Intergovernmental Agreement dated July 25, 2002, and adopted by Albany Resolution No. 4735, into a single entity known as the Water and Wastewater Management Committee. Each party shall initially appoint and fill any subsequent vacancies for three persons to the 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 wastewater treatment plant 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. Expanded Davidson Plant/Wetlands Operating Entity. The parties agree that Albany is the appropriate entity to provide operation and maintenance (O&M) duties for the Expanded Davidson Plant or contract out services as deemed necessary at its discretion. 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 services at the most reasonable cost to each party.

The Operating Entity shall be responsible for conducting the day-to-day business affairs of the Expanded Davidson Plant, 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 percent (10%) in aggregate of the original contract amount. The Project Manager shall, however, report all change orders to the Management Committee at their next regularly scheduled meeting.

(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 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 share of the O&M costs of the Expanded Davidson Plant and Wetlands Treatment System. O&M costs for Millersburg's wastewater collection system shall be established by a separate agreement.

d. Each party shall budget and appropriate its proportionate share of the O&M costs of the system. O&M costs shall be based on utility cost of service principles for cost allocations. Each party's proportionate share of the Expanded Davidson Plant shall include direct O&M costs plus appropriate indirect overhead costs, including reserves for repair and replacement, debt service, contingency, and other expenses, will be based on utility cost of service principles.

(1) A draft budget shall be prepared by the Operating Entity based on 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 on utility cost of service principles, based on the actual percentage of total hydraulic and organic use 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 effective date of the Agreement to the end of the current fiscal year.

(3) The Operating Entity shall provide quarterly budget reports to the Management Committee not later than 30 days after the end of each quarter. The report shall show expenditures by budget item for each transaction through the last working day of the preceding quarter.

e. **Auditing.** 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.

11. 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 to insure planned Project completion.

(2) Involuntary Termination. Failure to make a payment within 90 days of receiving the invoice or within 90 days after payment deadline dates specified herein, chronic failure to participate in improvements when due, or other material breach of this Agreement shall allow the non-defaulting party the opportunity to terminate the Agreement. In the event of termination, the non-defaulting party shall give notice and a 30-day period for the defaulting party to cure or commence diligently to cure the default.

(3) Withdrawal and Termination. 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 six months from the date of notice.

(4) Separation of Assets. Upon termination, Albany will become the sole owner of the Expanded Davidson Plant and all other structures, equipment, and facilities related thereto, including those acquired pursuant to the terms of this Agreement. Following termination, Millersburg shall have a contractual right to continue to receive domestic and industrial wastewater treatment services from Albany. Albany shall be obligated to provide these wastewater treatment services to Millersburg, up to the amount of treatment/disposal capacity paid for by Millersburg pursuant to the terms of this Agreement, prior to its termination. These services shall be provided at a rate which will reflect Millersburg's financial contributions to the Expanded Davidson Plant's capacity and any other financial contributions made pursuant to the terms of this Agreement. If the parties cannot agree upon this future rate, their disagreement shall be resolved by the dispute resolution process hereinafter set forth.

b. **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, or in the event of a failure of the parties to agree on an element of this agreement which is currently undecided, the parties shall first attempt to resolve the dispute by negotiation, followed by mediation, if negotiation fails to resolve the dispute. If the parties are

unsuccessful in resolving a dispute through negotiation or mediation, the dispute shall be resolved through binding arbitration.

(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 therefore. 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 there from.

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

d. 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 Phase 1 Project and the Phase 1 Wetlands Project and supersedes all previous agreements and understandings relating to the Phase 1 Project and the Phase 1 Wetlands 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 Administrator/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 that have any proprietary ownership in the Expanded Davidson Plant and the Wetlands Treatment System.

(11) Prior Memorandums of Agreement (MOA). This Agreement supersedes and replaces the parties' MOA executed September 25, 2006, and MOA, Aeration Basin, executed November 13, 2006. Upon execution of this Agreement, both of these MOAs shall be disregarded in full and no longer be binding.

(12) Agreement conditioned upon development of Agreement for Operations and Maintenance. This Agreement shall not be final and binding until and unless the parties enter into a mutually satisfactory agreement for the Operation and Maintenance of Millersburg's Wastewater Collection System and until all exhibits and companion agreements referred to in this Agreement or the Agreement for Wastewater Collection System Operations and Maintenance, have been fully negotiated and accepted by both parties.

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

APPROVED AS TO FORM:

By: _____
Albany City Attorney

ATTEST:

By: 
City Recorder

CITY OF MILLERSBURG:

By: _____
Mayor

APPROVED AS TO FORM

By: _____
Millersburg City Attorney

ATTEST:

By: _____
City Administrator/Recorder

EXHIBITS

- 1. Map showing general layout of Existing Davidson Plant**
- 2. Preliminary Cost Estimate for Phase 1, Davidson Plant**
- 3. Map showing planned improvements to the Davidson Plant**

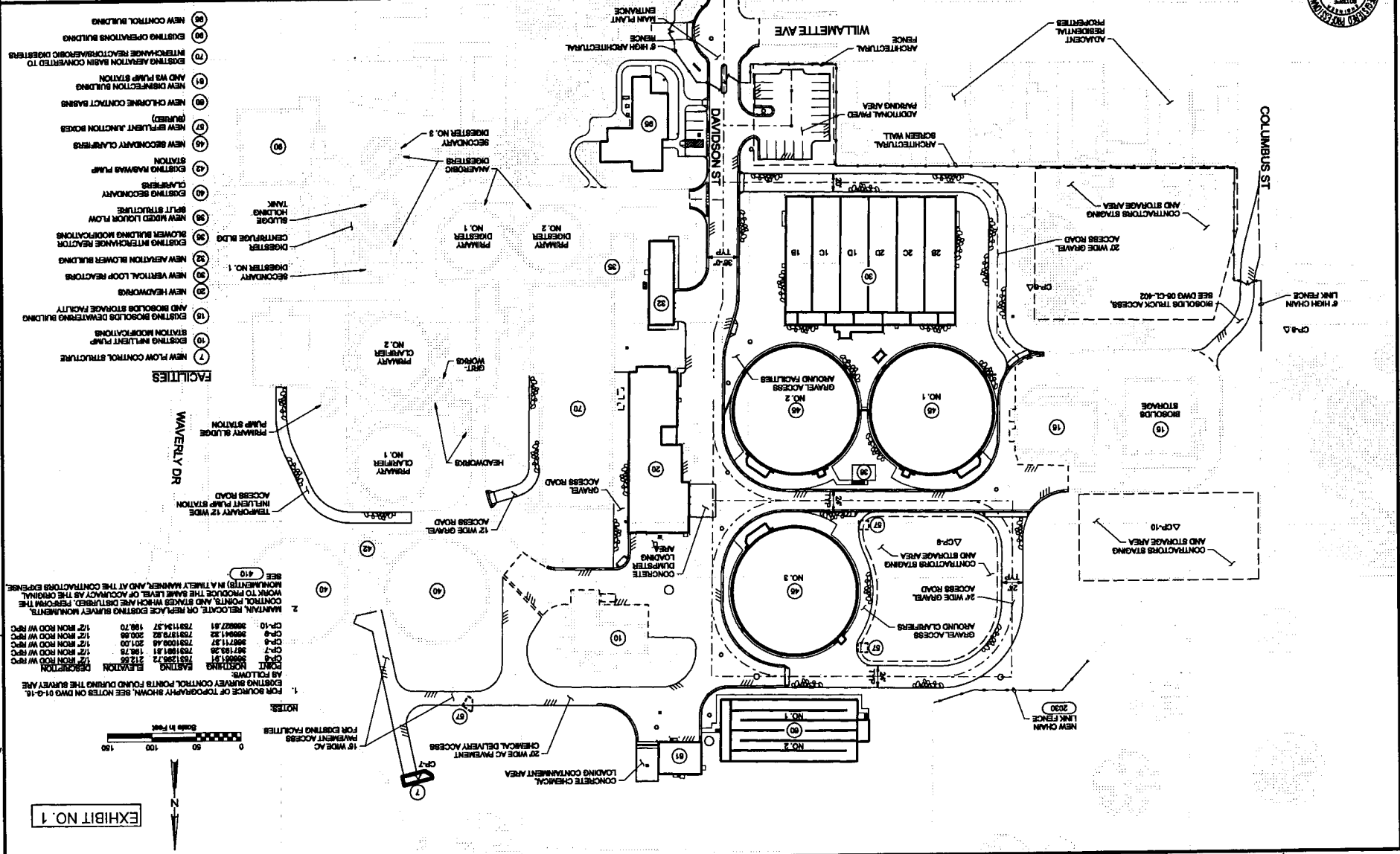


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CH2MHILL
CORPORATE
WATER TREATMENT SYSTEM IMPROVEMENT PROJECT
CITY OF ALBANY
WANTON, OREGON

OVERALL SITE PLAN

SHEET	138
DWG	05-C-100
DATE	MAY 19 2005
PROJ	28818
FILENAME	050100_28818.dwg
PLOT TIME	4:25:33 PM



FACILITIES

- 7 NEW FLOW CONTROL STRUCTURE
- 8 EXISTING INFILTRATION PUMP
- 9 EXISTING INFILTRATION PUMP
- 10 EXISTING INFILTRATION PUMP
- 11 EXISTING INFILTRATION PUMP
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- 13 EXISTING INFILTRATION PUMP
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- 50 EXISTING INFILTRATION PUMP

NOTES:

1. FOR SOURCE OF TOPOGRAPHY SHOWN, SEE NOTES ON DWG 04-16. EXISTING SURVEY CONTROL POINTS FOUND DURING THE SURVEY ARE AS FOLLOWS:

POINT	HEIGHT	ELEVATION	DESCRIPTION
CP-1	888881.91	121.55	1/2" IRON ROD W/ R/C
CP-2	887188.72	212.55	1/2" IRON ROD W/ R/C
CP-3	887188.72	212.55	1/2" IRON ROD W/ R/C
CP-4	887188.72	212.55	1/2" IRON ROD W/ R/C
CP-5	887188.72	212.55	1/2" IRON ROD W/ R/C
CP-6	887188.72	212.55	1/2" IRON ROD W/ R/C
CP-7	887188.72	212.55	1/2" IRON ROD W/ R/C
CP-8	887188.72	212.55	1/2" IRON ROD W/ R/C
CP-9	887188.72	212.55	1/2" IRON ROD W/ R/C
CP-10	887188.72	212.55	1/2" IRON ROD W/ R/C

2. MAINTAIN, RELOCATE, OR REMOVE EXISTING SURVEY MONUMENTS. WORK TO PRODUCE THE SAME LEVEL OF ACCURACY AS THE ORIGINAL MONUMENTS IN A TIMELY MANNER, AND AT THE CONTRACTOR'S EXPENSE.

SEE 410

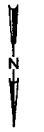
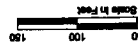


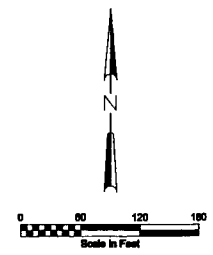
EXHIBIT NO. 1

REUSE OF DOCUMENTS: THIS DOCUMENT AND THE DESIGN AND CONSTRUCTION INFORMATION CONTAINED HEREIN ARE THE PROPERTY OF CH2M HILL. ANY REUSE OF THIS DOCUMENT OR THE DESIGN AND CONSTRUCTION INFORMATION CONTAINED HEREIN WITHOUT THE WRITTEN PERMISSION OF CH2M HILL IS STRICTLY PROHIBITED.




Preliminary Cost Estimate for Phase 1, Davidson Plant

WWTP		
Engineering		
	City	\$ 700,000
	CH2M	\$ 8,600,000
	Other	\$ 200,000
	Subtotal	\$ 9,500,000
Construction		
	Off site	\$ 500,000
	Wildish	\$ 52,000,000
	Conting.	\$ 3,000,000
	US Filter	\$ 4,300,000
	HDPE Pipe	\$ 100,000
	Subtotal	\$ 59,900,000
Other		
	Permits	\$ 200,000
	NPDES	\$ 100,000
	Misc	\$ 300,000
	Subtotal	\$ 600,000
	WWTP TOTAL	\$ 70,000,000

EXHIBIT NO. 3

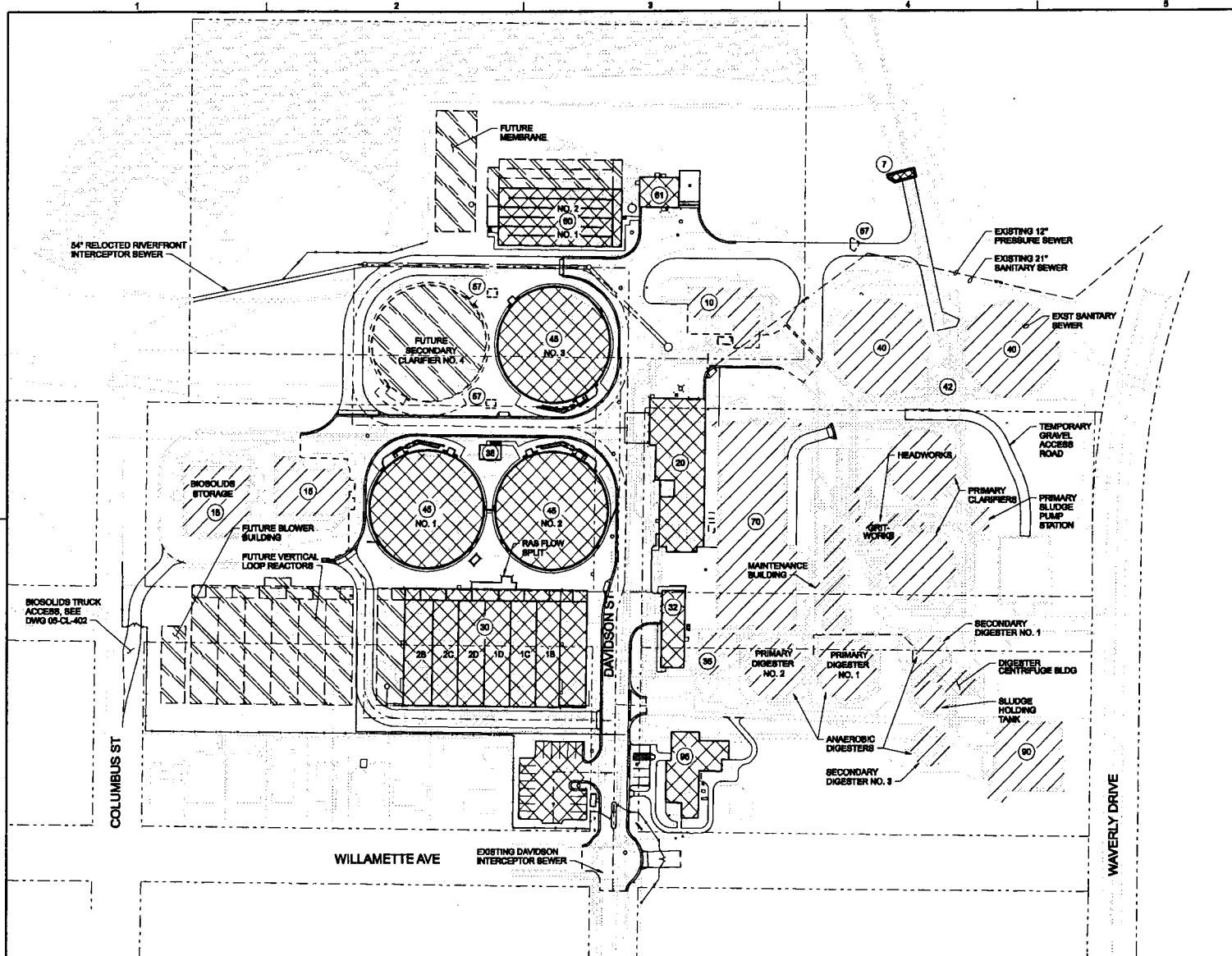


LEGEND:

-  EXISTING STRUCTURES
-  NEW STRUCTURES
-  FUTURE STRUCTURES

FACILITIES

- 7 NEW FLOW CONTROL STRUCTURE
- 10 EXISTING INFLUENT PUMP STATION MODIFICATIONS
- 16 EXISTING BIOSOLIDS DEWATERING BUILDING AND BIOSOLIDS STORAGE FACILITY MODIFICATIONS
- 20 NEW HEADWORKS
- 30 NEW VERTICAL LOOP REACTORS
- 32 NEW AERATION BLOWER BUILDING
- 36 EXISTING INTERCHANGE REACTOR BLOWER BUILDING MODIFICATIONS
- 38 NEW MIXED LIQUOR FLOW SPLIT STRUCTURE
- 40 EXISTING SECONDARY CLARIFIERS
- 42 EXISTING RAS/WAS PUMP STATION
- 46 NEW SECONDARY CLARIFIERS
- 57 NEW EFFLUENT JUNCTION BOXES (BURIED)
- 60 NEW CHLORINE CONTACT BASIN
- 61 NEW DISINFECTION BUILDING AND W3 PUMP STATION
- 70 EXISTING AERATION BASIN CONVERTED TO INTERCHANGE REACTORS/AEROBIC DIGESTERS
- 80 EXISTING OPERATIONS BUILDING
- 90 NEW CONTROL BUILDING



DSGN	JT ASHLEY				
DR	BALONG				
CHK	DJ PETERSON				
APVD	CW MASSIE	NO.	DATE	REVISION	BY

VERIFY SCALE
 BAR IS ONE INCH ON ORIGINAL DRAWING.
 IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY.



CITY OF ALBANY
 WASTEWATER SYSTEM IMPROVEMENT PROJECT
 WWT-03-01
 LINN COUNTY, OREGON

SITE DEVELOPMENT

SHEET	128
DWG	06-C-101
DATE	MAY 19 2008
PROJ	329616

FILENAME: AlbanyConditions.dgn PLOT DATE: 4/9/2007 PLOT TIME: 1:15:53 PM

REUSE OF DOCUMENTS: CH2M HILL AND THE DESIGN AND CONSTRUCTION OF PROFESSIONAL SERVICES IN THE PROPERTY OF CH2M HILL.