

RESOLUTION NO. 6686

A RESOLUTION AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF MILLERSBURG TO PROVIDE FIRE PROTECTION AND LIFE SAFETY SERVICES.

WHEREAS, the City of Albany and the City of Millersburg, collectively referred to as "Cities," have a history of cooperatively working together for mutual benefit; and

WHEREAS, the Cities have determined that it is in the best interests of each organization and mutually beneficial to establish a joint agreement for Millersburg to contract with Albany for fire protection and life safety services; and

WHEREAS, Albany is a regularly incorporated city within the State of Oregon and maintains firefighting and emergency medical equipment, and a force to staff the same; and

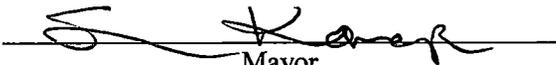
WHEREAS Millersburg is a regularly incorporated city within the State of Oregon without firefighting and emergency medical equipment and staff; and

WHEREAS, Albany and Millersburg are units of local government, authorized under ORS 190 010 to enter into written intergovernmental agreements for the performance of specified activities; and

WHEREAS, newly negotiated intergovernmental agreements call for adoption of the agreement 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 the City of Millersburg, provided as Exhibit A.

DATED AND EFFECTIVE THIS 25<sup>TH</sup> DAY OF APRIL 2018.

  
Mayor

ATTEST

  
Deputy City Clerk



**INTERGOVERNMENTAL AGREEMENT**  
**Between**  
**The City of Albany and The City of Millersburg**  
**For**  
**Fire Protection and Life Safety Services**

This agreement is entered into by and between the City of Albany (“Albany”), and the City of Millersburg (“Millersburg”) collectively referred to as "Cities."

WHEREAS, ORS 190 003 et.seq provides for intergovernmental cooperation in the interest of furthering economy and efficiency of local units of government; and

WHEREAS, ORS 190.003 for purposes of such intergovernmental cooperation defines a unit of local government as including a county, city, district, or other public corporation, commission, authority, or entity organized and existing under statute or county or city charter; and

WHEREAS, ORS 190 010 provides that a unit of local government may enter into a written agreement with any other unit or units of local government for the performance of any or all functions and activities that are party to the Agreement, its officers or agencies have authority to perform, and

WHEREAS, the Cities have a history of cooperatively working together for mutual benefit; and

WHEREAS, the Cities wish to build upon that cooperative history and enhance the fire protection services to both Cities; and

WHEREAS, the Cities have determined that it is in the best interests of each organization and mutually beneficial to establish a joint agreement for Millersburg to contract with Albany for fire protection and life safety services, and

WHEREAS, the Cities wish to establish this collaborative agreement to ensure continued consideration of opportunities for cooperation which may arise; and

WHEREAS, Albany is a regularly incorporated city within the State of Oregon and maintains firefighting and emergency medical equipment, and a force to staff the same; and

WHEREAS Millersburg is a regularly incorporated city within the State of Oregon without firefighting and emergency medical equipment and staff; and

WHEREAS, negotiations have been entered into between the Cities for the purpose of providing for the furnishing of all fire suppression and prevention services and emergency medical services (herein called “EMS”) first response, and such additional emergency services Albany provides at the time to their citizens through Albany to Millersburg; and

WHEREAS, the negotiations concerning the adoption of a fair and equitable charge to be paid and the terms of coverage should be reduced to writing.

NOW, THEREFORE, under the contractual authority of ORS 190, it is agreed between the Cities as follows:

**Article 1. Scope of Services:**

**Fire Protection and Life Safety Services**

Albany agrees to provide the following services to Millersburg:

- 1) To direct and provide fire protection and life safety services within Millersburg in a manner consistent with this Agreement. Under this condition, the territory within Millersburg shall be served as an integrated territory within Albany, not as an independent, autonomous, or segregated territory. Accordingly, if temporary demands for services exceed Albany's capacity, Albany may use its mutual aid agreements as necessary to supplement Albany's personnel, apparatus, and equipment.
- 2) To provide fire protection and life safety services to Millersburg beginning July 1, 2018. Staffing at Millersburg's fire station shall begin July 1, 2018, or at such time as a fire station becomes available in Millersburg, and Albany has hired, trained, and promoted new personnel to staff this station. The station will be staffed with a two-person crew twenty-four [24] hours per day, seven days per week.
- 3) Under no circumstances is Albany liable to Millersburg for an interruption or failure of service due to acts of God, unavoidable accident, or other circumstances beyond the control of Albany.
- 4) To maintain mutual aid agreements and automatic aid agreements as may be appropriate for the effective provision of fire protection and life safety services.
- 5) To provide fire and life safety plan review to Linn County for Millersburg for new development and construction consistent with applicable codes and/or ordinances mutually agreed to by the Cities.
- 6) To investigate fires.
- 7) To review and propose fire codes and ordinances for adoption.
- 8) To perform fire inspections.
- 9) To enforce applicable codes, ordinances, regulations, and statutes.
- 10) To conduct public education programs.
- 11) To maintain accurate records.
- 12) To participate in mutual aid agreements with all fire protection providers in Linn and Benton Counties with Albany pursuant to the County-Wide Mutual Aid Agreement and establish and

maintain automatic aid agreements in areas in which service might be improved by such agreements.

13) To coordinate activities with other City departments. Such activities shall include, but not be limited to emergency management consulting, fire and life safety plan review, water supply and hydrant maintenance, etc.

14) To participate in traditional community events and new events as appropriate.

15) To ensure compliance with all applicable state and federal mandates.

**Article 2. Staffing and Apparatus at Millersburg Fire Station:**

Albany will open the fire station in Millersburg with two personnel per 24-hour shift, staffing either a brush engine/rescue or a rescue. This compliment of equipment and staffing shall remain until such time as additional personnel and apparatus are added to the station.

**Article 3. Opening the Millersburg Fire Station:**

- 1 All costs associated with acquiring property, design, and construction of a temporary or permanent fire station in Millersburg shall be paid by Millersburg.
2. Millersburg shall also be responsible for all startup costs for outfitting and equipping a new fire station. These costs may include, but are not limited to purchasing:
  - a. additional apparatus, if necessary for this station,
  - b. equipment for apparatus, such as extrication tools, Advance Life Support; medical/airway kits, heart monitor/defibrillator, etc.,
  - c. PPE/Turnouts to outfit new firefighters,
  - d. uniforms;
  - e. communications equipment such as radios, computers, etc;
  - f. fitness equipment;
  - g. kitchen supplies,
  - h. copier; and
  - i. and other assorted items.

**Article 4. Ongoing Station Expenses:**

Once the Millersburg fire station is operational, Millersburg will be responsible for providing property insurance and major repairs to the facility Millersburg will provide water, sewer, and garbage service to the station. Albany will be responsible routine station maintenance, communications utilities and equipment needed for connectivity with Albany's network and IT system, and modifications and upgrades agreed to by both parties. Albany will also be responsible for day-to-day cleaning.

**Article 5. Term/Time of Performance:**

Upon ratification of the Cities, the terms of this agreement shall become effective July 1, 2018 and shall remain in effect until June 30, 2028 Either City may request termination of this agreement for any reason with 365 days written notice to the other City

**Article 6. Compensation:**

Millersburg agrees to compensate Albany \$2.00 per \$1,000 of total Assessed Valuation of property in Millersburg, as determined by the Linn County Assessor's Office, Summary of Assessment and Tax Roll, column "Taxable Value."

Millersburg's rate shall be established by the November reporting by the County's assessed value divided by 1000 times 2.00 (assessed value ÷ \$1,000 x \$2.00) for the budget year in which service is provided. The assessed values shall be those established by the County Assessor for the tax year beginning July 1 of the fiscal year. The rate shall be payable to Albany in three payments.

Millersburg shall make payments to Albany based on the amount due, on the following schedule: one-half (1/2) of the amount due on December 15, one-quarter (1/4) of the amount due March 15, and one-quarter (1/4) of the amount due on June 15. Amounts not paid within fifteen (15) days of the due date shall bear interest equal to the State of Oregon Local Government Investment Pool (LGIP) for the month in which the payment was due.

**Article 7. Increase/Decrease Station Staffing Based on Compensation:**

Millersburg's 2018-19 assessed taxable value, divided by \$1,000, times \$2.00, shall be used as a baseline for determining when personnel will be added or subtracted to the Millersburg fire station. Each additional \$450,000 of compensation paid by Millersburg to Albany for fire protection above this baseline in a given year shall result in three additional suppression personnel added to the Millersburg station staffing (one per shift). This \$450,000 amount shall be adjusted annually based on the National CPI-W.

In addition to providing more suppression personnel, an increase of compensation from Millersburg due to growth will result in an increased workload to the Albany Life Safety Division. This additional compensation will help staff additional personnel, as needed, to conduct fire and life safety plan review, business inspections, and public interaction necessary to deal with growth in Millersburg.

If Millersburg's compensation decreases by a \$450,000 increment (adjusted annually based on the National CPI-W) above or below the baseline, three suppression personnel shall be removed from the Millersburg fire station.

At no time will station staffing be allowed to be less than two per shift. If funding does not support this minimum, the Millersburg station will not be staffed.

**Article 8. Contributions Toward Apparatus and Equipment Replacement:**

Millersburg will contribute \$35,000 per year toward equipment replacement purchases for the Albany Fire Department. These funds will be used to purchase and replace fire department apparatus and equipment for the general benefit of the entire Department response district. If Millersburg experiences greater than a 10 percent annual increase in assessed value after the second year, they may request to reopen this article only and renegotiate the terms of Article 8.

In the event that a rescue only is staffed out of the Millersburg fire station, the parties agree that this article will be suspended until a minimum of a brush engine/rescue is staffed out of this station.

**Article 9. Changes:**

This agreement contains the entire agreement between the Cities hereto and supersedes any and all prior express and/or implied statements, negotiations and/or agreements between the Cities, either oral or written. Any party to this agreement may from time to time request changes in the scope of the agreement as set forth herein. No changes shall be valid unless in writing and signed by all parties to this agreement.

**Article 10. Negotiations:**

In the event that union negotiations cause a material change that make the terms of this Agreement financially impractical to either City, the Cities agree to re-negotiate, in good faith, terms that equitably adjust the financial and other applicable terms of this Agreement in a manner reasonably acceptable to the Cities to reflect this material change in circumstances. In the event that the parties, after good faith negotiations, are unable to reach a mutual agreement as to terms, either party may terminate this agreement upon written notice to the other party

**Article 11. Transfer of Interest:**

No party to this agreement shall assign or transfer any interest in or duty under this agreement without the written consent of the other parties, and no assignment shall be of any force or effect whatsoever unless and until the other parties shall have so consented in writing.

**Article 12. Indemnity:**

Each aforementioned City agrees to defend, hold harmless, and indemnify the other City, their officers, employees, board members, and agents from any and all liability, damages, costs, expenses, and attorney fees arising out of the Cities' negligence while engaged in the activities arising out of this agreement. Each City agrees that on formal request of the other it will participate in the defense of any claim or action brought against the other party when a question of fact exists as to whether an employee of the party not named caused or contributed to the damage complained of.

**Article 13. Governing Law:**

This Agreement and its construction shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law Any claim, action, suit, or proceeding, including discovery proceedings, (collectively, "Claim") between the Parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the State of Oregon Circuit Court and venue shall lie in Linn County, Oregon.

**Article 14. Severability:**

If any provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision, or portion thereof, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law

**Article 15. Entire Agreement:**

This Agreement and the exhibits attached hereto sets forth the entire understanding among the Parties with respect to the subject matter referenced herein, there being no terms, conditions, warranties or representations with respect to its subject matter other than as contained herein.

**Article 16. Notices and Demands:**

Any notice, demand, or other communication under this Agreement shall be sufficiently given if sent by (i) registered or certified mail return receipt requested, postage prepaid, (ii) nationally recognized overnight courier service or (iii) facsimile transmission, when it is sent by overnight or two-day delivery by nationally recognized courier service within two (2) days of the facsimile transmission.

**In the case of City of Millersburg:**

City of Millersburg  
ATTN Kevin Kreitman, City Manager  
4222 Old Salem Road NE  
Albany, OR 97321

**With a copy to:**

Forrest Reid, Esq  
ATTN Forrest Reid  
135 5th Avenue SW  
Albany, Oregon 97322  
Phone: 541-926-3823  
Facsimile: 541-926-0833

**In the case of the City of Albany:**

City of Albany  
ATTN Peter Troedsson, City Manager  
333 Broadalbin SW  
P O Box 490  
Albany, OR 97321-0144  
Phone: 541-917-7505  
Facsimile: 541-917-7511

**With a copy to:**

Delapoer Kidd, P C  
ATTN M Sean Kidd, Albany City Attorney  
201 First Avenue W Suite B  
Albany, OR 97321  
Phone: 541-926-5505

**Article 17. Binding Effect:**

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns.

**Article 18. Modifications:**

This Agreement cannot be changed orally, and no agreement shall be effective to waive, change, modify, or discharge it in whole or in part unless such agreement is in writing and is signed by the Parties against whom enforcement of any waiver, change, modification, or discharge is sought.

**Article 19. Further Assurances:**

Each Party agrees that it will, without further consideration, execute and deliver such other documents and take such other action as may be reasonably requested by another Party to more effectively consummate or achieve the purposes or subject matter of this Agreement.

**Article 20. Attorneys' Fees:**

In the event of any controversy, claim, or dispute between the Parties affecting or relating to the subject matter or performance of this Agreement, each prevailing Party shall, to the extent prohibited by applicable law, be entitled to recover from each non-prevailing Party all of its reasonable expenses, including reasonable attorneys, experts and accountants fees and expenses of litigation, whether incurred at trial or on appeal and including any incurred in or in connection with any bankruptcy proceeding.

**Article 21. Counterparts:**

The Agreement may be executed in several counterparts, either by manual, facsimile, or email signatures and all such executed counterparts shall constitute on and the same agreement.

**Article 22. Headings:**

The article headings set forth in this Agreement are for convenience and reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

**Article 23. Construction:**

The Parties acknowledge that the parties and their counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

**Article 24. Time of the Essence:**

Time is of the essence of each and every term, covenant, and condition set forth in this Agreement.

**Signatures:**

City of Albany

City of Millersburg

By:  By: \_\_\_\_\_

Date: 26 April 2018 Date: \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_