

RESOLUTION NO. 6515

A RESOLUTION AUTHORIZATING EXECUTION OF TWO INTERGOVERNMENTAL AGREEMENTS WITH THE CITY OF LEBANON FOR SHARED USE OF THE SANTIAM-ALBANY CANAL.

WHEREAS, Albany purchased the Santiam-Albany Canal (Canal) from Pacific Power and Light in 1984; and

WHEREAS, subsequent to the 1984 purchase, Albany and Lebanon entered into an Intergovernmental Agreement for shared use of the Canal; and

WHEREAS, Lebanon is pursuing a new water intake on the South Santiam River and no longer intends to rely on the Canal for raw water delivery; and

WHEREAS, the two communities still have shared interests in the Canal and have negotiated two new intergovernmental agreements based on the current interests of each community; 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 City of Albany City Council hereby authorizes the Mayor and City Manager to execute the attached intergovernmental agreements with the City of Lebanon, provided as Attachment 1 and Attachment 2, respectively.

DATED AND EFFECTIVE THIS 8TH DAY OF JUNE 2016.


Mayor

ATTEST:


City Clerk

ATTACHMENT 1

SANTIAM-ALBANY CANAL GENERAL AGREEMENT

THIS AGREEMENT is made and entered into on this ___ day of _____, 2016, by and between the CITY of ALBANY, a Municipal Corporation, hereinafter referred to as "Albany," and the CITY of LEBANON, a Municipal Corporation, hereinafter referred to as "Lebanon."

The purpose of this Agreement is to terminate and replace the Agreement titled "Intergovernmental Agreement for Operation of Albany-Santiam Canal," dated April 23, 1986, between Albany and Lebanon, including that Agreement referenced therein referred to as dated December 12, 1984.

RECITALS

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

WHEREAS, Albany owns the Santiam-Albany Canal (Canal), Diversion Dam, Intake (or Headworks) Facilities, Flow Control Facilities, and other appurtenances to the Canal; and

WHEREAS, Canal flows and the Canal itself must be maintained; and

WHEREAS, Albany and Lebanon have other areas of shared interest regarding the Canal that will require cooperation into the future; and

WHEREAS, Albany 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, both communities desire a fair and equitable cost-sharing arrangement for their respective rate payers.

NOW, THEREFORE, the Parties agree as follows:

1. **Background:**

1.1 The Canal as it presently exists was built in two phases:

1.1.1 The first section, known as the "Albany Canal," was built in 1872-73 and reached from the South Santiam River near Lebanon and stretched 12 miles in a generally northwestern direction to Albany.

1.1.2 In approximately 1891-92, a second intake from the South Santiam River was constructed with an accompanying six miles of Canal built to the south of the Albany Canal, referred to as the "Lebanon Canal."

1.2 The Canal was constructed to allow water gravity flow across the valley floor from the South Santiam River south of Lebanon to the Calapooia River in Albany. When built, the Canal intercepted and changed some of the natural drainage patterns/contours. Over time as development occurred, further changes in these natural drainage patterns occurred. The nature and location of the changes are not presently known and these changes are not the subject of this agreement.

1.3 In 1921 a flood destroyed the original intake to the Albany Canal. At that time, the upper reaches of the Albany Canal built in 1872-73 were abandoned and the diversion from the South Santiam River to the Lebanon Canal was used to deliver water through both Canal systems. In 1923, the two Canals came under single ownership.

- 1.4 Canal ownership has changed hands over the years. The City of Albany purchased the Canal and all of its appurtenances from Pacific Power and Light (PP&L) in 1984.
- 1.5 In 1984 Albany also acquired from PP&L the Vine Street water treatment plant (WTP), Albany's power generation facilities, associated water rights, and Albany's water distribution system.
- 1.6 In 1984, Lebanon purchased its WTP and distribution system along with the associated water rights.
- 1.7 Subsequent to the 1984 purchases, Albany and Lebanon entered into an Intergovernmental Agreement for use of the Canal.
- 1.8 At various times, bridges, utility, and other types of crossing over, under, or through the Canal were also constructed.
- 1.9 Stormwater enters the Canal along its 18.3 miles.

2. **New Agreement:** This Agreement terminates, replaces, and resolves all claims related to the Agreement titled "Intergovernmental Agreement for Operation of Albany-Santiam Canal," dated April 23, 1986, between Albany and Lebanon, including that Agreement referenced therein referred to dated December 12, 1984, and all subsequent modifications to those agreements.

While this Agreement is in effect, its terms shall govern the parties' rights and responsibilities for discharges into the Canal. Following termination, nothing in this agreement shall be deemed to grant, recognize, or limit any claim or defense either party may wish to advance concerning their respective rights or liabilities for discharges subsequent to the termination of this Agreement.

3. **Lebanon's Uses of Canal:** Lebanon's current use of the Canal includes the matters listed below. Further terms concerning these uses are set forth in this Agreement.

- 3.1 **Raw Water Supply and Delivery:** Upon execution of this agreement, and except as authorized by an accompanying water delivery agreement, the Canal shall not be used for raw water supply and delivery except as may be provided for through a separate written Intergovernmental Agreement or contract.

- 3.2 **Drainage:** The locations of known public drainage connections within Lebanon's urban growth boundary are identified in Exhibit A. Other unknown connections may exist.

- 3.3 **Crossings:** The locations of known crossings within Lebanon's urban growth boundary are identified in Exhibit B attached hereto. Other unknown crossings may exist.

4. **Drain/Storm Water Management:**

- 4.1 The Parties agree that Lebanon shall pay Albany \$900,000 for stormwater removal and/or maintenance projects on the Canal. The Parties agree that, once improved, and as allowed by regulatory agencies, the Crown Zellerbach Gates and Mark's Slough weir can be used to help mitigate the impact of storm event flows to the Canal and reduce the risk of downstream Canal flooding by diverting flows to Mark's Slough.

- 4.1.1 Lebanon will pay Albany the following sums:

- 4.1.1.A \$500,000 July 15, 2016;

- 4.1.1.B \$250,000 January 15, 2018;

- 4.1.1.C \$75,000 January 15, 2019;
- 4.1.1.D \$75,000 January 15, 2020; and
- 4.1.1.E Albany will invoice Lebanon for payments required per this Agreement. 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 with 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

- 4.1.2 Albany will use the monies paid by Lebanon for projects and activities intended to remove stormwater from, and maintain, the Canal including, but not limited to, the projects identified in 4.1 above.
 - 4.1.3 Lebanon will transfer to Albany by appropriate deed, title of the Crown Zellerbach (CZ) gates by January 1, 2017. The form of deed and legal description is attached as Exhibit C.
 - 4.1.4 Lebanon will convey to Albany permanent easements to allow Albany access to Marks Slough weir structure for construction, inspection, maintenance, and improvement activities by January 1, 2017. The form of easement and legal description is attached as Exhibit D.
- 4.2 Lebanon agrees to undertake the following projects:
- 4.2.1 Lebanon will rehabilitate or replace the two facilities that drain Cheadle Lake over and under the Canal. A capacity analysis will be completed to determine if additional capacity is required for replacement facilities. This work is estimated to cost \$100,000 and will be completed by January 1, 2018.
 - 4.2.2 Lebanon will reroute the inlet on Bromil Street away from the Canal and fill the abandoned drain line with non-shrink grout for a distance of approximately 10 feet from the current outlet to the Canal. This work does not have a significant cost and will be completed by January 1, 2018.
 - 4.2.3 As part of the Russell Drive street project identified in the Cheadle Lake Urban Renewal Plan, Lebanon will construct stormwater infrastructure necessary to redirect approximately 15 acres of property (portions of parcels 12S02W14DC00100 and 12S02W14DC02300) away from the Canal. This work is estimated to cost \$50,000 and will be completed by January 1, 2019.
- 4.3 Within five (5) years of the date of this Agreement, Lebanon will complete and follow a refinement plan to Lebanon's Stormwater Master Plan for the portions of Lebanon that drain to the Canal or have the potential to drain to the Canal through future development (Lebanon-Albany Canal Basin (L), the Cox Creek Basin and other known smaller areas of Lebanon public discharges to the Canal). The refinement plan will be completed in compliance with the requirements of Exhibit E.

- 4.3.1** “Master Plan” and “Refinement Plan” for purposes of this agreement are defined as municipal utility master planning documents developed based on industry standard methods and practices that contain the items identified in Exhibit E and establish a comprehensive long-term strategy for removing stormwater from, and preventing stormwater from entering, the Canal.
- 4.3.2** It is anticipated that the refinement plan effort can be completed for less than \$150,000 in consultant costs. If consultant proposals exceed this amount, the Parties will meet to identify funding/scope alternatives to bring the project within budget or identify additional funding sources.
- 4.4** Lebanon will not construct or authorize any new stormwater connections to the Canal without Albany’s written approval. As used in this subsection, new stormwater connection refers to a new manmade point of connection, or increase in capacity of an existing connection, between a stormwater collection facility or drainage way and the Canal, usually in the form of a pipe or ditch.
- 4.5** The Parties are each responsible for complying with any current and future legal or regulatory requirements placed on or resulting from drainage entering the Canal from their respective jurisdictions, including any identified and/or incremental costs required to assure compliance with regulatory standards directly resulting from discharges within their respective jurisdictions.
- 4.6** For developing and redeveloping properties that drain directly or indirectly to the Canal (meaning, any property where drainage ultimately discharges to the Canal) in a legal, Albany-approved pre-developed or existing condition, and have no other drainage options available, Lebanon will require the development to detain 100 percent of stormwater runoff through a 100-year event (10-, 25-, 50-, and 100-year) with a 10-year pre-development maximum release rate and provide permanent post-construction stormwater quality improvements that meet Oregon DEQ 401 Water Quality Certification requirements for all runoff. The requirement of this section shall only apply to development/re-development projects on property of 0.5 acres or more.
- 4.6.1** For redevelopment projects with existing impervious surfaces, the assumed run off coefficient for existing impervious areas, for detention calculations, shall be no greater than 0.4.
- 4.7** Albany agrees to continue/initiate discussions with Oregon Department of Transportation (ODOT) and the Linn County Road Department regarding removal of other unauthorized stormwater inflows to the Canal, as may be applicable.
- 4.8** Impact of this Agreement on Future Land Use Decisions: In making future land use decisions, Lebanon shall consider and be bound by the terms of this Agreement and the Refinement/Master Plan. Albany will be entitled to notice of all land use proposals wherein development/redevelopment is proposed in drainage basins that drain directly or indirectly to the Canal.
- 5. Cheadle Lake:** Prior to June 1, 2017, Albany and Lebanon agree to develop and implement a Cheadle Lake Management Plan that is protective of the Canal berm and downstream properties. Neither party, by virtue of this agreement, assumes any additional liability related to Cheadle Lake.
- 6. Access and Use:** As owner of the Canal and its appurtenances, access to the Canal and the extents of the Canal rights-of-way and easements is restricted to Albany staff and its agents, except as may be expressly allowed through this Agreement, separate written agreements, or

deeded rights. The Parties agree to comply with all state and federal environmental and safety laws and regulations when accessing and using the Canal. Notwithstanding the termination clause set forth in Section 11 below, the rights and responsibilities set forth in this Section 6 survive termination of the Agreement.

6.1 General Authorizations and Restrictions:

- 6.1.1 Lebanon shall not authorize any public or private uses of, or access to, the Canal rights-of-way or easements, or the Albany-owned assets within those boundaries, for any purpose. Lebanon shall refer such requests to Albany.
- 6.1.2 Lebanon must obtain written permission from Albany for any new infrastructure proposed within Canal rights-of-ways or easements (i.e., crossings where they do not currently exist).
- 6.1.3 Each party grants to the other the right to enter onto and across the property of the other as reasonably necessary for the construction, maintenance, and protection of their respective facilities and improvements. Nothing herein shall separately authorize the placement of any facilities, improvements, fixtures, appurtenances, or other property in, on, or across the Canal and/or property of the other.
- 6.1.4 Lebanon will convey to Albany permanent easements to allow Albany access to the Lebanon Flow Control Structure for construction, inspection, maintenance, and improvement activities by January 1, 2017. The form of easement and legal description is attached as Exhibit D.
- 6.1.5 Either Party exercising their rights hereunder to gain access over or across the property of the other shall take all reasonable steps to return the property to its original condition following the completion of the work for which access is required. Either Party causing damage to real or personal property of the other shall promptly restore and repair the damage at no cost to the other Party.

6.2 Maintenance/Construction – Lebanon’s Existing Infrastructure:

- 6.2.1 **When Permissions are Required.** Lebanon will seek and obtain permission from Albany prior to conducting work on existing infrastructure (i.e. bridge and utility crossings identified in Section 3.3) that impacts Canal flows, water quality, water diversions, the integrity of Canal infrastructure, access within Canal right-of-way and easements for more than 24 hours, or if the desired infrastructure repair/replacement is different in size, location, elevation, or cross-section from what exists. Lebanon understands that some maintenance/construction activities may require Federal Energy Regulatory Commission (FERC) review and approval.
- 6.2.2 **Emergencies.** In the case of emergency not covered by the terms of Section 8 below, Lebanon will attempt to notify appropriate Albany staff before proceeding to affect emergency repairs on Lebanon’s infrastructure, but in any event shall notify Albany within 24 hours of its emergency activity.

6.3 Indemnification: Each party shall indemnify and hold harmless from all claims, demands, regulatory sanctions, and damages, including costs of defense, arising from their use of, or access onto and across, the property of the other.

7. Communications of Hazardous Conditions: Lebanon agrees to communicate potentially hazardous conditions that may impact Canal operations or that may warrant a response. Examples of these types of conditions include, but are not limited to, animal carcasses, downed

trees, pollution or unidentified substances, obstructions, observable water losses or intrusions, and vandalism or other nuisance conditions in the Canal requiring remediation. Albany will communicate with Lebanon if they identify any potentially hazardous conditions that could impact Lebanon.

8. Emergency Preparedness and Response:

8.1 Albany agrees to maintain an Emergency Action Plan (EAP) for the Canal and its associated structures, and to implement the EAP as necessary to protect the health, safety, and welfare of Albany and Lebanon citizens and properties.

8.2 Lebanon agrees to assign qualified staff and to participate, as staff is available, in the development and updates to the EAP for the Canal, and to carry out the roles and responsibilities agreed to by Lebanon in the EAP.

8.3 Lebanon agrees to take all prudent measures to respond to spills, accidents, or other emergency situations in Lebanon that may impact the Canal and/or the health and safety of adjacent or downstream properties and residents, and to communicate with Albany as soon as the situation is identified.

9. 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.

10. Modification: All modifications to the Agreement must be approved in writing by both cities' governing bodies.

11. Term and Termination: The initial term of this Agreement is 15 years. Following the initial term, this Agreement may be terminated as follows:

11.1 Either Party gives written Notice to the other Party of its intent to terminate the Agreement at least two years in advance, in which case this Agreement will terminate automatically on the second annual anniversary of the written Notice.

11.2 In the event of the termination of this Agreement, except for the terms of Section 6 above, the rights and responsibilities of the parties will thereafter be determined without regard to the recitals, statements or terms of this Agreement. In such a circumstance, claims or defenses based upon time limitations, laches, or waiver shall be tolled as of the date of this Agreement until the date of termination.

12. 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.

13. 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.

14. **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.
15. **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.
16. **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.
17. **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.
18. **Resolution:** Both Parties agree to adopt this Agreement by Resolution of its respective City Council.

FOR CITY OF LEBANON:

FOR CITY OF ALBANY:

Paul Aziz, Mayor

Sharon Konopa, Mayor

Gary B. Marks, City Manager

Wes Hare, City Manager

Approved as to Content:

Approved as to Content:

Ron Whitlatch, Engineering Services Director

Jeff Blaine, P.E., Public Works Engineering and
Community Development Director

Chris Bailey, Public Works Operations Director

Approved as to Form:

Approved as to Form:

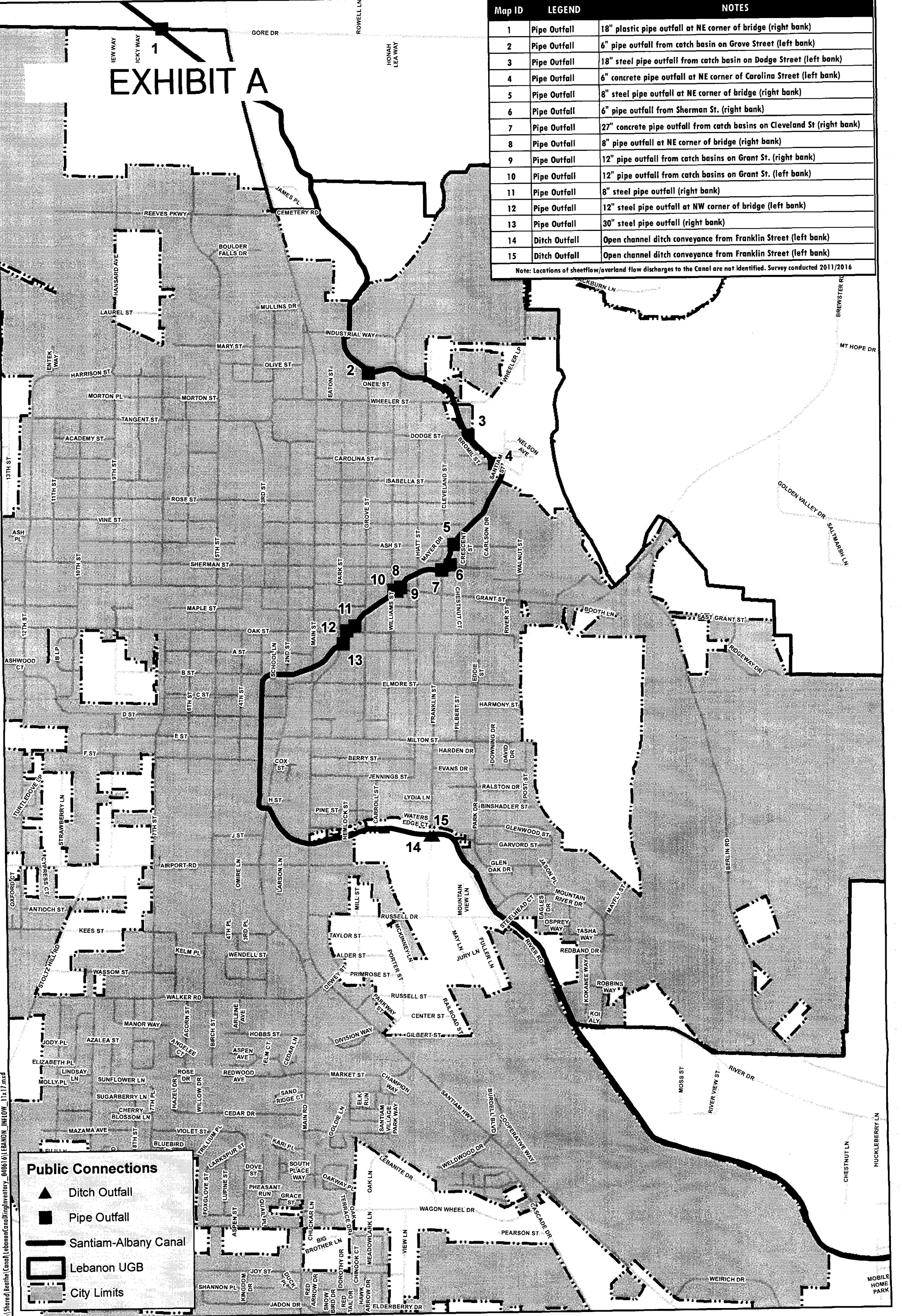
John Tre' Kennedy, City Attorney

James Delapoer, City Attorney

EXHIBIT A

Map ID	LEGEND	NOTES
1	Pipe Outfall	18" plastic pipe outfall at NE corner of bridge (right bank)
2	Pipe Outfall	6" pipe outfall from catch basin on Grove Street (left bank)
3	Pipe Outfall	18" steel pipe outfall from catch basin on Dodge Street (left bank)
4	Pipe Outfall	6" concrete pipe outfall at NE corner of Carolina Street (left bank)
5	Pipe Outfall	8" steel pipe outfall at NE corner of bridge (right bank)
6	Pipe Outfall	6" pipe outfall from Sherman St. (right bank)
7	Pipe Outfall	27" concrete pipe outfall from catch basins on Cleveland St (right bank)
8	Pipe Outfall	8" pipe outfall at NE corner of bridge (right bank)
9	Pipe Outfall	12" pipe outfall from catch basins on Grant St. (right bank)
10	Pipe Outfall	12" pipe outfall from catch basins on Grant St. (left bank)
11	Pipe Outfall	8" steel pipe outfall (right bank)
12	Pipe Outfall	12" steel pipe outfall at NW corner of bridge (left bank)
13	Pipe Outfall	30" steel pipe outfall (right bank)
14	Ditch Outfall	Open channel ditch conveyance from Franklin Street (left bank)
15	Ditch Outfall	Open channel ditch conveyance from Franklin Street (left bank)

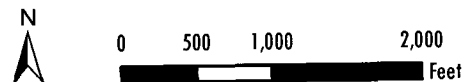
Note: Locations of sheetflow/overland flow discharges to the Canal are not identified. Survey conducted 2011/2016



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Public Connections

- ▲ Ditch Outfall
- Pipe Outfall
- Santiam-Albany Canal
- ▭ Lebanon UGB
- ▭ City Limits



City of Lebanon Drainage Connections to the Santiam-Albany Canal

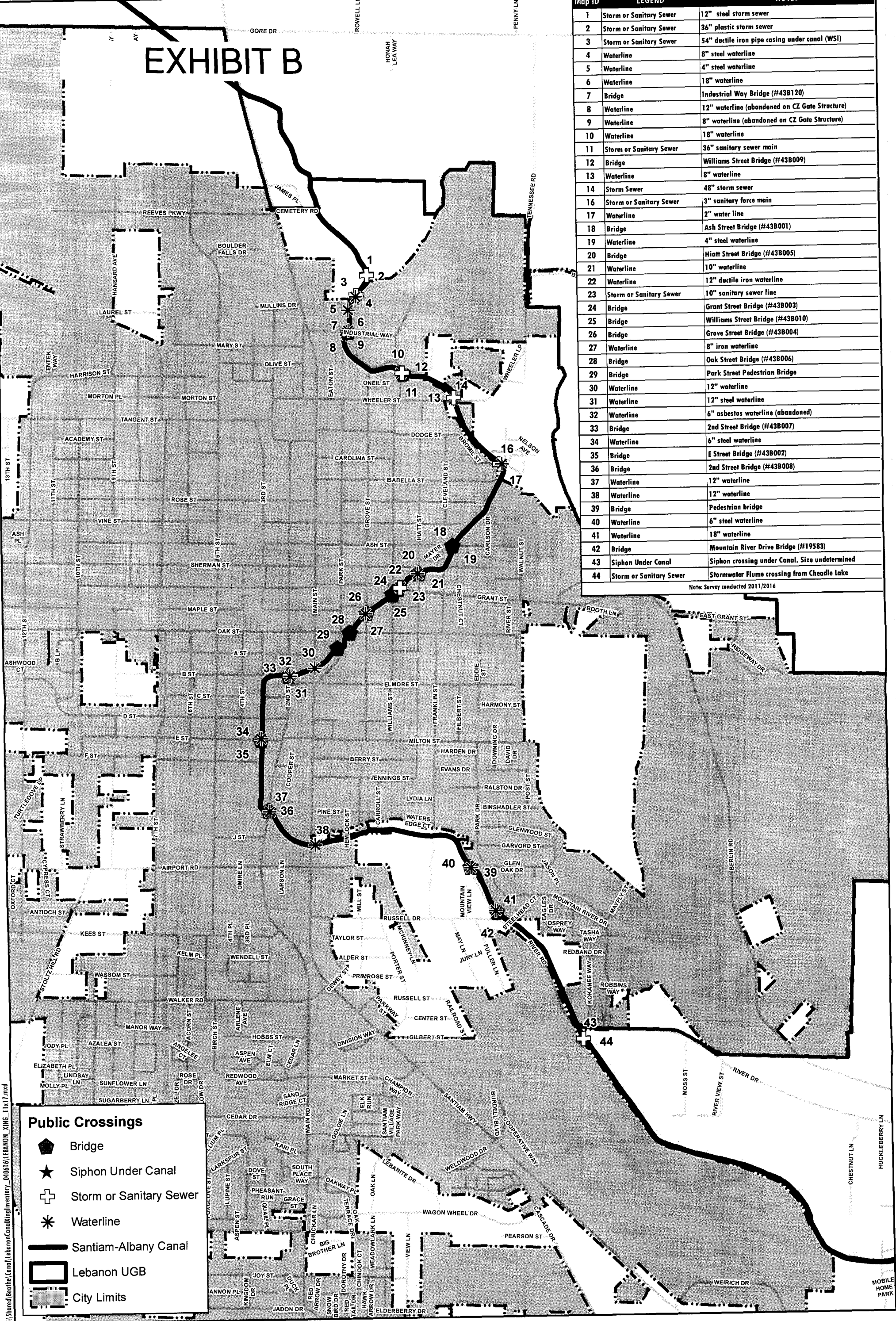
Date: 5/25/2016



EXHIBIT B

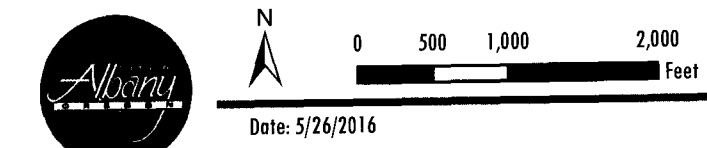
Map ID	LEGEND	NOTES
1	Storm or Sanitary Sewer	12" steel storm sewer
2	Storm or Sanitary Sewer	36" plastic storm sewer
3	Storm or Sanitary Sewer	54" ductile iron pipe casing under canal (WSI)
4	Waterline	8" steel waterline
5	Waterline	4" steel waterline
6	Waterline	18" waterline
7	Bridge	Industrial Way Bridge (#43B120)
8	Waterline	12" waterline (abandoned on CZ Gate Structure)
9	Waterline	8" waterline (abandoned on CZ Gate Structure)
10	Waterline	18" waterline
11	Storm or Sanitary Sewer	36" sanitary sewer main
12	Bridge	Williams Street Bridge (#43B009)
13	Waterline	8" waterline
14	Storm Sewer	48" storm sewer
16	Storm or Sanitary Sewer	3" sanitary force main
17	Waterline	2" water line
18	Bridge	Ash Street Bridge (#43B001)
19	Waterline	4" steel waterline
20	Bridge	Hiatt Street Bridge (#43B005)
21	Waterline	10" waterline
22	Waterline	12" ductile iron waterline
23	Storm or Sanitary Sewer	10" sanitary sewer line
24	Bridge	Grant Street Bridge (#43B003)
25	Bridge	Williams Street Bridge (#43B010)
26	Bridge	Grove Street Bridge (#43B004)
27	Waterline	8" iron waterline
28	Bridge	Oak Street Bridge (#43B006)
29	Bridge	Park Street Pedestrian Bridge
30	Waterline	12" waterline
31	Waterline	12" steel waterline
32	Waterline	6" asbestos waterline (abandoned)
33	Bridge	2nd Street Bridge (#43B007)
34	Waterline	6" steel waterline
35	Bridge	E Street Bridge (#43B002)
36	Bridge	2nd Street Bridge (#43B008)
37	Waterline	12" waterline
38	Waterline	12" waterline
39	Bridge	Pedestrian bridge
40	Waterline	6" steel waterline
41	Waterline	18" waterline
42	Bridge	Mountain River Drive Bridge (#19583)
43	Siphon Under Canal	Siphon crossing under Canal. Size undetermined
44	Storm or Sanitary Sewer	Stormwater Flume crossing from Cheadle Lake

Note: Survey conducted 2011/2016



Public Crossings

- ◆ Bridge
- ★ Siphon Under Canal
- ⊕ Storm or Sanitary Sewer
- * Waterline
- Santiam-Albany Canal
- - - Lebanon UGB
- ⋯ City Limits



City of Lebanon Utility Crossings on the Santiam-Albany Canal

Santiam-Albany Canal General Agreement

Exhibit B

Date: 5/26/2016

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EXHIBIT C

QUITCLAIM DEED

The **City of Lebanon**, a political subdivision of the State of Oregon, **Grantor**, releases and quitclaims to the **City of Albany**, a political subdivision of the State of Oregon, **Grantee**, all right, title and interest in and any associated easements over the following described real property together with any rights of access thereto for the purposes of operating, maintaining, repairing, and replacing the existing Albany-Lebanon Santiam Canal flow control gate structure commonly known as the Crown-Zellerbach (CZ) Gates and together with those fixtures including but not limited to the flow control dam, its electrical mechanical systems, and those abandoned water pipes located within said real property described as follows:

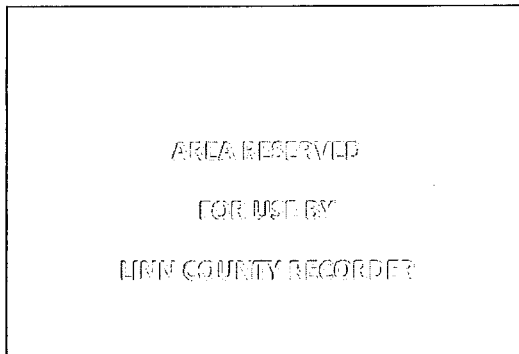
An area of land within the southwest 1/4 of Section 2, Township 12 South, Range 2 West, Willamette Meridian, in the City of Lebanon, Linn County, Oregon more particularly described as follows:

Beginning at a point on the south right of way line of Industrial Way in the City of Lebanon, Oregon, said point being the northwest corner of Parcel C of Linn County Survey 19190; thence, South 29°16'27" West along the east boundary of the Albany-Lebanon Santiam Canal 17.15 feet; thence, continuing along the east boundary of the Albany-Lebanon Santiam Canal South 22°48'16" West 16.78 feet; thence, South 44°28'05" West along the east boundary of said canal 54.17 feet; thence, North 46°29'26" West across said canal 67.48 feet; thence, North 56°08'21" East 45.73 feet to the south right of way line of Industrial Way in the City of Lebanon, Oregon; thence, South 87°26'21" East along said south right of way line of Industrial Way 63.86 feet to the point of beginning.

Also including a license for additional perimeter fencing outside the land described herein which is presently located within the Industrial Way right of way some of which is presently bolted on the street bridge over said canal.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

The true consideration for this conveyance is \$1.00 .



Dated this _____ day of _____, 20_____.

STATE OF OREGON)
County of Linn)ss.
City of Lebanon)

The City of Albany, Oregon hereby accepts conveyance of property interest contained herein from the City of Lebanon, Oregon this _____ day of _____, 20_____.

STATE OF OREGON)
County of Linn)ss.
City of Lebanon)

Gary B. Marks
City Manager

GRANTOR

By: _____
Title: _____

By: _____
Title: _____

On the ____ day of _____, 20_____, personally appeared the within named _____ who acknowledged the foregoing instrument to be a voluntary act and deed.

BEFORE ME: _____
NOTARY PUBLIC FOR OREGON

Commission Expires: _____

GRANTEES

On the ____ day of _____, 20_____, personally appeared _____

for the City of Albany, a Municipal Corporation, and that the seal affixed to the foregoing instrument was signed and sealed in behalf of said corporation by authority of its City Council, which accepted this deed on the _____ day of _____, 20_____, and acknowledged said instrument to be a voluntary act and deed.

BEFORE ME: _____
NOTARY PUBLIC FOR OREGON

Commission expires: _____

EXHIBIT D

EASEMENT FOR ACCESS AND MAINTENANCE

THIS AGREEMENT, made and entered into this ____ day of _____, 20__ by and between the CITY OF LEBANON, (Address: 925 Main Street, Lebanon, Oregon 97355), a Municipal corporation, herein called Grantor, and the CITY OF ALBANY (Address: 333 Broadalbin Street S.W., Albany, Oregon 97321), a Municipal corporation, herein called "Grantee".

WITNESSETH:

That for and in consideration of the total compensation to be paid by the Grantee, the Grantor does bargain, sell, convey and transfer unto the Grantee, a perpetual and permanent easement and right-of-way over, across, through and under the lands hereinafter described, including the right to enter upon the real property hereinafter described, to maintain, repair, and improve the Lebanon-Albany Santiam Canal and its appurtenances including Mark's Slough diversion structure and the related channel, together with the right to demo unused foundations and structures, construct necessary access, excavate and refill related ditches and/or trenches, stage materials and equipment for construction activities, and the further right to remove trees, bushes, under-growth and other obstructions interfering with the location and maintenance of the said facilities or access thereto.

This agreement is subject to the following terms and conditions:

1. The right-of-way hereby granted is described as follows:
SEE EXHIBITS "A" and "B" ATTACHED
2. The permanent easement described herein grants to the Grantee and to its successors, assigns, authorized agents or contractors, the perpetual right to enter upon said easement at any time that it may see fit for construction, maintenance, evaluation and/or repair purposes.
3. The easement granted is in consideration of \$ 0 _____, the receipt of which is hereby acknowledged, and in further consideration of the public improvements to be placed upon said property and the benefits Grantor may obtain therefrom.
4. The Grantor does hereby covenant with the Grantee that Grantor is lawfully seized and possessed of the real property above described, has a good and lawful right to convey it or any part thereof, and will forever warrant and defend the title thereto against the lawful claims of all persons whomsoever.
5. Upon performing any maintenance, the Grantee will make reasonable efforts to return the site to its original condition.
6. No permanent structure shall be constructed on this easement except as expressly allowed.

IN WITNESS WHEREOF, we have set our hands hereto this ____ day of _____, 20__.

STATE OF OREGON)
County of Linn)ss.
City of Lebanon)

By: _____
Paul Aziz, Mayor
Bob Elliott, Council President

By: _____
Linda Kaser, City Clerk/Recorder

GRANTOR(S)

On the ____ day of _____, 20__, personally appeared _____ and LINDA KASER, who each being duly sworn, did say that the former is the Mayor/Council President and the latter is the Recorder for the City of Lebanon, a Municipal Corporation, and that the seal affixed to the foregoing instrument was signed and sealed in behalf of said corporation by authority of its City Council, which accepted this easement on the ____ day of _____, 20__, and each of them acknowledged said instrument to be its voluntary act and deed.

BEFORE ME: _____
NOTARY PUBLIC FOR OREGON

Commission expires: _____

IN WITNESS WHEREOF, we have set our hands hereto this ____ day of _____, 20__.

STATE OF OREGON)
County of Linn)ss.
City of Lebanon)

By: _____
Sharon Konopa, Mayor

GRANTEES

On the ____ day of _____, 20__, personally appeared _____ the _____ within _____ named _____ who acknowledged the foregoing instrument to be a voluntary act and deed.

BEFORE ME: _____
NOTARY PUBLIC FOR OREGON

Commission Expires: _____

AREA RESERVED
FOR USE BY
LINN COUNTY RECORDER

EXHIBIT "A"

An area of land located along the north boundary of the Lebanon-Albany Santiam Canal between South 2nd Street and South Main Street in the Southeast quarter of Section 10, Township 12 South, Range 2 West, Willamette Meridian in the City of Lebanon, Linn County, Oregon more particularly described as follows:

Beginning at the north line of the right of way of the Lebanon-Albany Santiam Canal where the same crosses the east boundary of Block 4, William Ralston's Addition to Lebanon; thence, North 14 feet along the east boundary of said Block 4; thence, South 67°00'59" West 52.46 feet; thence, North 23°50'53" West 16.82 feet; thence, South 67°15'08" West 37.91 feet; thence, South 23°50'53" East 21.38 feet; thence, South 67°00'59" West 118.64 feet; thence, South 75°07'45" West 147.15 more or less to the west boundary of said Block 4; thence, East along the south boundary of said Block 4 a distance of 150 feet; thence, North 59°06'29" East 213.09 along the north line of the right of way of the Lebanon-Albany Santiam Canal feet more or less to the point of beginning.

Save and except any portion within the streets or canal rights of way.

EXHIBIT "B"

An area of land located along the east boundary of the Lebanon-Albany Santiam Canal north of Wheeler Street in the Northwest quarter of Section 11, Township 12 South, Range 2 West, Willamette Meridian in the City of Lebanon, Linn County, Oregon more particularly described as follows:

Beginning on the north line of the Wheeler Street right of way where the same crosses the east boundary of the Lebanon-Albany Santiam Canal, said point being South 89°55' West 1014 feet and North 0°05' West 30 feet from the southwest corner of the James M. Marks Donation Land Claim 44; thence, North 28°17'30" West 99.64 feet along the east boundary of the Lebanon-Albany Santiam Canal; thence, continuing along said east boundary North 37°47'30 West 91.81 feet; thence, continuing along said east boundary North 51°56'15" West 124.74 feet; thence, North 7°26'15" East 68.56 feet; thence, North 64°39'45" East 33.04 feet; thence, South 47°20'59" East 97.27 feet; thence, South 42.18 feet; thence, South 28°41'48" East 173.08 feet; thence, South 25°01'01" East 65.53 feet to the north line of the Wheeler Street right of way; thence, South 89°55'00" West 19.39 feet to the point of beginning.

Save and except any portion within the streets or canal rights of way.

EXHIBIT E

The refinement plan analysis will:

- Begin soon after execution of this Agreement. The Parties agree to develop a work plan, with identification of interim milestones, which will accomplish the identified tasks within the five-year window.
- Clearly and accurately delineate areas that directly and indirectly drain to the Canal. (Meaning, all areas for which their drainage ultimately discharges to the Canal. This will include areas that are not adjacent to the Canal but are within a drainage basin discharging to the Canal.)
- Define required long-term infrastructure improvements to redirect stormwater away from the Canal, if allowed or able to be permitted by regulatory agencies. (Pumped solutions will not be required.)
- Identify infrastructure in undeveloped areas to route stormwater away from the Canal with future development, as allowed or able to be permitted by regulatory agencies. (Pumped solutions will not be required.)
- Identify areas that have “no other drainage options available” (as used in Section 4.6) other than the Canal for the purposes of clearly defining development requirements in areas that potentially drain to the Canal. These areas will be identified in collaboration with the City of Albany.
- Quantify Canal inflows from each drainage area in Lebanon draining to the Canal at 10-, 25-, 50-, and 100-year rain events for existing conditions and buildout conditions (post-reroute).

As it relates to Canal drainage, Lebanon will include Albany in the refinement/master planning process, including but not limited to, providing an opportunity for Albany to review and comment on the methodology, data collection, and work efforts required for each of the items identified above.

ATTACHMENT 2

SANTIAM-ALBANY CANAL WATER DELIVERY AGREEMENT (AGREEMENT)

THIS AGREEMENT is made and entered into on this ____ day of _____ 2016 by and between the CITY of ALBANY, a Municipal Corporation, hereinafter referred to as "Albany," and the CITY of LEBANON, a Municipal Corporation, hereinafter referred to as "Lebanon."

RECITALS

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

WHEREAS, Albany and Lebanon have entered into a general Intergovernmental Agreement (IGA) regarding the Santiam-Albany Canal titled Santiam-Albany Canal General Agreement and dated _____, 2016; and

WHEREAS, Albany owns the Canal, Diversion Dam, Intake (or Headworks) Facilities, Flow Control Facilities, and all other appurtenances to the Canal; and

WHEREAS, Canal flows and the Canal itself must be maintained; and

WHEREAS, the Parties, through separate authorizations from the Oregon Water Resources Department, hold certificates and permits to divert and beneficially use water from the South Santiam River; and

WHEREAS, Lebanon will continue to rely on the diversion and delivery of South Santiam River water by way of the Canal for its raw source of municipal water supply until their new water treatment plant (located at 2500 River Road) with a dedicated South Santiam River intake is fully operational; and

WHEREAS, Lebanon intends to abandon the current water intakes at Cheadle Lake and the water treatment plant (WTP) located at 1155 South Second Street once the new WTP is commissioned to obtain its water supply directly from the South Santiam River without the aid of the Canal; and

WHEREAS, Albany 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, both communities desire a fair and equitable cost-sharing arrangement for their respective rate payers.

NOW, THEREFORE, the Parties agree as follows:

1. **Purpose:** The Parties have entered into an Intergovernmental Agreement (IGA) titled Santiam-Albany Canal General Agreement and dated _____, 2016. The IGA requires a separate written agreement or contract between the Parties for any raw water supply and delivery via the Santiam-Albany Canal. The purpose of this Agreement is to satisfy that requirement and allow use of the Canal for water delivery from the South Santiam River to Cheadle Lake and Lebanon's Water Treatment Plant.
2. **Water Supply and Delivery**
 - 2.1 **Albany's Duties**
 - 2.1.1 Under the terms of this agreement, the Canal will continue to deliver water from the South Santiam River to Lebanon's diversions to Cheadle Lake and Lebanon's Water Treatment Plant (WTP) located at 1155 South Second Street (also referred to as Canal WTP herein), in volumes not to exceed Lebanon's municipal water rights

of use on record with the Oregon Water Resources Department, not to exceed 37 cubic feet per second.

- 2.1.2 Albany owns or controls, and agrees to take all reasonable actions to operate and maintain in good and proper working condition the Diversion Dam on the South Santiam River, the Canal intake facilities, and the Canal, for the purposes of delivering water as described in 2.1.1.
- 2.1.3 Albany shall not be responsible or liable for the quality of the water delivered to Lebanon Canal WTP or any cost associated with treating water delivered.
- 2.1.4 Any water delivery from the South Santiam River through the Canal to others holding water rights of use from the Oregon Water Resources Department is between Albany and the user; not the City of Lebanon.
- 2.1.5 If Albany must temporarily interrupt or curtail water delivery for a non-emergency situation, Albany agrees to notify Lebanon a minimum of one week prior to altering flows to the Lebanon Canal WTP.
- 2.1.6 Albany agrees to notify Lebanon as soon as reasonably possible once an imminent or emergency need to curtail or interrupt water delivery from the South Santiam River to the Lebanon Canal WTP is identified.
- 2.1.7 Notwithstanding any other provision in this Agreement, Albany shall have the right to interrupt, terminate, or reduce water delivery to Lebanon's WTP as a result of acts beyond Albany's control such as floods, low stream flows, equipment or structural failures, or contamination.
- 2.1.8 Albany shall have the right to reduce water delivery to Lebanon's Water Treatment Plant as necessary to meet any curtailment or conservation measure imposed upon Albany by any other unit of government. In such circumstance, Albany shall provide Lebanon with any pre-curtailement notification received from regulators.

2.2 Lebanon's Duties

- 2.2.1 Lebanon is responsible for operating and maintaining the Lebanon WTP.
- 2.2.2 Lebanon agrees to share water withdrawal information with Albany as necessary to assist Albany in managing the Canal.
- 2.2.3 Lebanon is solely responsible to comply with requirements imposed by the Oregon Water Resources Department or any other regulatory agency.
- 2.2.4 Lebanon is responsible for all fees and charges for water supply and delivery as identified in Section 3.

3. Fees and Charges for Water Supply and Delivery: In addition to the items identified elsewhere in this Agreement where funding requirements and responsibilities are explicitly stated, this section identifies the fees and charges to be paid to Albany by Lebanon. These charges are in consideration of the provision of capital infrastructure and operations, maintenance and management services associated with water delivery to Lebanon from the South Santiam River to Cheadle Lake and the Lebanon WTP located at 1155 South Second Street

- 3.1 Lebanon shall pay to Albany \$77,000 for fiscal year 2015-2016 (July 1, 2015, through June 30, 2016).

- 3.2 Lebanon shall pay to Albany \$133,000 per fiscal year (July 1st through June 30th) beginning July 1, 2016.
- 3.3 Lebanon shall not be responsible for additional capital expenses related to raw water supply and delivery through the Canal by Albany.
- 3.4 The annual payment referenced in Section 3.2 shall be adjusted annually based on the year-to-year increase in the March CPI-W rate for the previous year.
- 3.5 Lebanon will submit quarterly payments to Albany for one-fourth of the annual payment. Albany will invoice Lebanon for regular quarterly payments. 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. Payments are due: July 15th, October 15th, January 15th, and April 15th.
- 3.6 Lebanon agrees to pay all quarterly amounts owed by the dates shown on the payment schedule above, unless otherwise agreed to in writing by both parties. Any late payment shall bear interest at three (3) percent per annum, 30 days from invoice. Interest shall automatically accrue with written notice from Albany.
4. **Abandonment of Canal WTP:** Upon termination of this agreement, or within 18 months of Lebanon's South Santiam River WTP coming fully online (providing potable water for consumption), whichever occurs first, Lebanon will abandon its Cheadle Lake and WTP diversions/intakes on the Canal, the discharge connections from any backwash water and settling ponds, and restore the Canal banks/berms in the area of the Canal WTP and along Cheadle Lake where equipment has been removed or abandoned.
5. **Sharing of Information:** The Parties agree to promptly share information received from regulatory bodies that may be reasonably expected to impact the other Party's water use from the Canal.
6. **Termination:** The rights and obligations set forth in this Agreement shall expire 120 days after written notice from Lebanon to Albany that it will discontinue water delivery from the South Santiam River through the Canal, or five years from the date of this Agreement, whichever occurs first. The Parties may renew or extend the term of this Agreement upon mutual written agreement.
7. **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.
8. **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.
9. **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.

10. **Modification:** All modifications to the Agreement must be approved in writing by both parties' governing bodies.
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 regulation. 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:** This Agreement will be adopted by City Council Resolution of each Party.

FOR CITY OF LEBANON:

FOR CITY OF ALBANY:

Paul Aziz, Mayor

Sharon Konopa, Mayor

Gary B. Marks, City Manager

Wes Hare, City Manager

Approved as to Content:

Approved as to Content:

Ron Whitlatch, Engineering Services Director

Jeff Blaine, P.E., Public Works Engineering and
Community Development Director

Chris Bailey, Public Works Operations Director

Approved as to Form:

Approved as to Form:

John Tre' Kennedy, City Attorney

James Delapoer, City Attorney