

A RESOLUTION ADOPTING SUPPLEMENTAL)  
AGREEMENT TO ORDINANCE NO. 1557 )

RESOLUTION NO. 18  
for 1976

WHEREAS, the government agency requires two amending paragraphs to Ordinance No. 1557, and it is necessary to take this course of action to qualify for certain matching funds;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF LEBANON AS FOLLOWS:

Section 1. That the Supplemental Agreement dated April 25, 1976, between CH2M HILL, INC, and City of Lebanon entitled "Supplemental Agreement, City of Lebanon, Oregon, Wastewater Treatment Project", marked Exhibit "E" and attached hereto, be adopted and incorporated in that certain contract described in and entered into in Ordinance No. 1557.

Passed by the Council and approved by the Mayor this 25th day of May, 1976.

M. Scroggin Gonzalez  
Mayor

ATTEST:

Ralph E. Jones  
Recorder

SUPPLEMENTAL AGREEMENT

CITY OF LEBANON, OREGON  
WASTEWATER TREATMENT PROJECT

THIS SUPPLEMENTAL AGREEMENT entered into this 25<sup>th</sup> day of April 1976, by and between CH2M HILL, INC., an Oregon corporation, hereinafter referred to as the ENGINEER and the CITY OF LEBANON, OREGON, hereinafter referred to as the OWNER, is intended to amend provisions of the following mutual Agreements:

- 1) Agreement to Furnish Engineering Services related to conducting a Value Engineering Analysis entered into the 25th day of November 1975 and;
- 2) Agreement to Furnish Engineering Services to the CITY OF LEBANON, OREGON, for Wastewater Treatment Plant Improvements entered into the 24th day of June 1975.

WITNESSETH:

WHEREAS, the OWNER wishes to qualify for federal grant-in-aid assistance for payment of cost and expenses heretofore accrued and to be accrued hereafter for the construction of a Wastewater Treatment Plant to be located in Lebanon, Oregon, and;

WHEREAS, the Environmental Protection Agency, hereinafter referred to as EPA, has from time to time published in the Federal Register rules governing procurement under grants for construction of treatment works, and;

WHEREAS, EPA published in the March 4, 1976 issue of the Federal Register an amendment to 40 CFR Part 35 Subpart E, which amendment is entitled Appendix C-1 and includes provisions required to be included in consulting engineering agreements entered into by grantees (Owners) of federal grants for treatment works, and;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in the above-mentioned Agreements it is mutually agreed that the following provisions shall become effective.

1. General.

- (a) The Owner and the ENGINEER agree that the following provisions shall apply to the work to be performed under this agreement and that such provisions shall supersede any conflicting provisions of this agreement.

Exhibit "E"

- (b) This agreement is funded in part by a grant from the U.S. Environmental Protection Agency. Neither the United States nor the U. S. Environmental Protection Agency (hereinafter, "EPA") is a party to this agreement. This agreement is subject to regulations contained in 40 CFR 35.936, 35.937, and 35.939.
2. Responsibility of the Engineer.
- (a) The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the ENGINEER under this agreement. The ENGINEER shall, without additional compensation, correct or revise any errors or deficiencies in his designs, drawings, specifications, reports and other services.
  - (b) The ENGINEER shall perform such professional services as may be necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and applicable EPA requirements.
  - (c) Approval by the Owner or EPA of drawings, designs, specifications, reports, and incidental engineering work or materials furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy of the work. Neither the Owner's nor EPA's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement, and the ENGINEER shall be and remain liable in accordance with applicable law for all damages to the Owner or EPA caused by the ENGINEER's negligent performance of any of the services furnished under this agreement.
  - (d) The rights and remedies of the Owner provided for under this agreement are in addition to any other rights and remedies provided by law.
3. Scope of Work.
- Except as may be otherwise specifically limited in this agreement, the services to be rendered by the ENGINEER shall include all services required to complete the task or step in accordance with applicable EPA regulations (40 CFR Part 35, Subpart E).
4. Changes.
- (a) The Owner may, at any time, by written order make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the ENGINEER's cost of, or time required for, performance

of any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Any claim of the ENGINEER for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the ENGINEER of the notification of change unless the Owner grants a further period of time before the date of final payment under this agreement.

- (b) No services for which an additional compensation will be charged by the ENGINEER shall be furnished without the written authorization of the Owner.

5. Termination.

- (a) This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this agreement through no fault of the terminating party: Provided, That no such termination may be effected unless the other party is given (1) not less than ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.
- (b) This agreement may be terminated in whole or in part in writing by the Owner for its convenience: Provided, That no such termination may be effected unless the ENGINEER is given (1) not less than ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.
- (c) If termination for default is effected by the Owner, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the ENGINEER at the time of termination may be adjusted to the extent of any additional costs occasioned to the Owner by reason of the ENGINEER's default. If termination for default is effected by the ENGINEER, or if termination for convenience is effected by the Owner, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.

- (d) Upon receipt of a termination action pursuant to paragraphs (a) or (b) above, the ENGINEER shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the Owner all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the ENGINEER in performing this agreement, whether completed or in process.
  - (e) Upon termination pursuant to paragraphs (a) or (b) above, the Owner may take over the work and prosecute the same to completion by agreement with another party or otherwise.
  - (f) If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not so failed, the termination shall be deemed to have been effected for the convenience of the Owner. In such event, adjustment of the price provided for in this agreement shall be made as provided in paragraph (c) of this clause.
  - (g) The rights and remedies of the Owner and the ENGINEER provided in this clause are in addition to any other rights and remedies provided by law or under this agreement.
6. Remedies.
- (a) All claims, counter-claims, disputes and other matters in question between the Owner and the ENGINEER arising out of or relating to this agreement or in the breach thereof will be decided by arbitration only if both parties hereto specifically agree to the use of arbitration in regard to the individual matter in dispute, except that all claims, counter-claims, disputes or other matters regarding cost or pricing data or audit questions shall be mandatorily arbitrated upon unilateral request of the ENGINEER.
  - (b) Except as may be otherwise provided in this agreement, or as the parties hereto may otherwise agree, all claims, counter-claims, disputes and other matters in question between the owner and the ENGINEER arising out of or relating to this agreement or the breach thereof will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations stated in paragraphs (d) and (e) below. This agreement and any other agreement or consent to arbitrate entered into in accordance therewith as provided below, will be specifically enforceable under the prevailing law of any court having jurisdiction.

- (c) Notice of demand for arbitration must be filed in writing with the other party to this Agreement, with the EPA Regional Administrator and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the time when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- (d) All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$200,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any claim, counter-claims, dispute or other matter in question where the amount in controversy thereof is more than \$200,000 (exclusive of interest and costs) or to render a monetary award in response thereto against any party which totals more than \$200,000 (exclusive of interest and costs).
- (e) No arbitration arising out of, or relating to, this agreement may include, by consolidation, joinder or in any other manner, any additional party not a party to this agreement.
- (f) By written consent signed by all the parties to this agreement and containing a specific reference hereto, the limitations and restrictions contained in paragraphs (d) and (e) above may be waived in whole or in part as to any claim, counter-claim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counter-claim, dispute or other matter in question will constitute consent to arbitrate any other claim, counter-claim, dispute or other matter in question which is not specifically described in such consent or in which the sum or value in controversy exceeds \$200,000 (exclusive of interest and costs) or which is with any party not specifically described therein.
- (g) The award rendered by the arbitrators will be final, not subject to appeal, and judgment may be entered upon it in any court having jurisdiction thereof.

7. Payment.

- (a) The ENGINEER may submit monthly or periodic statements requesting payment. Such requests shall be based upon the amount and value of the work and services performed by the ENGINEER under this agreement, and shall be prepared by the ENGINEER and supplemented or accompanied by such supporting data as may be required by the Owner.
- (b) Upon approval of such payment request by the Owner, payment upon properly certified vouchers shall be made to the ENGINEER as soon as practicable of ninety percent of the amount as determined above, less all previous payments: Provided, however, that if the Owner determines that the work under this agreement or any specified task hereunder is substantially complete and that the amount of retained percentages is in excess of the amount considered by him to be adequate for the protection of the Owner, he may at his discretion release to the ENGINEER such excess amount.
- (c) Upon satisfactory completion by the ENGINEER of the work called for under the terms of this agreement, and upon acceptance of such work by the Owner, the ENGINEER will be paid the unpaid balance of any money due for such work, including the retained percentages relating to this portion of the work.
- (d) Upon satisfactory completion of the work performed hereunder, and prior to final payment under this agreement for such work, or prior settlement upon termination of the agreement, and as a condition precedent thereto, the ENGINEER shall execute and deliver to the Owner a release of all claims against the Owner arising under or by virtue of this agreement, other than such claims, if any, as may be specifically exempted by the ENGINEER from the operation of the release in stated amounts to be set forth therein.

8. Project Design.

- (a) In the performance of this agreement, the ENGINEER shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques, methods, and processes, consistent with 40 CFR 35.936-3 and 35.936-13, except to the extent that advanced technology may be utilized pursuant to 40 CFR 35.908.

- (b) The ENGINEER shall not, in the performance of the work called for by this agreement, produce a design or specification such as to require the use of structures, machines, products, materials, construction methods, equipment, or processes which are known by the ENGINEER to be available only from a sole source, unless such use has been adequately justified in writing by the ENGINEER as necessary for the minimum needs of the project.
  - (c) The ENGINEER shall not, in the performance of the work called for by this agreement produce a design or specification which would be restrictive in violation of Sec. 204(a)(6) of the Federal Water Pollution Control Act (Pub. L 92-500). This statute requires that no specification for bids or statement of work may be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words "or equal."
  - (d) The ENGINEER shall report to the Owner any sole-source or restrictive design or specification giving the reason or reasons why it is considered necessary to restrict the design or specification.
  - (e) The ENGINEER shall not knowingly specify or approve the performance of work at a facility which is in violation of Clean Air or Water standards and which is listed by the Director of the EPA Office of Federal Activities pursuant to 40 CFR Part 15.
9. Audit; access to records.
- (a) The ENGINEER shall maintain books, records, documents and other evidence directly pertinent to performance on EPA grant work under this agreement in accordance with accepted professional practice, appropriate accounting procedures and practices, and 40 CFR 30.605, 30.805, and 35.935-7. The ENGINEER shall also maintain the financial information and data used by the ENGINEER in the preparation or support of the cost submission required pursuant to 40 CFR 35.937-6(b) and a copy of the cost summary submitted to the Owner. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, Owner, and (the State Water Pollution Control Agency) or any of their duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The ENGINEER will provide proper facilities for such access and inspection.



- (b) The ENGINEER agrees to include paragraphs (a) through (f) of this clause in all his contracts and all tier subcontracts directly related to project performance which are in excess of \$10,000.
  - (c) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).
  - (d) The ENGINEER agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraphs (a) and (b) above, to any of the agencies referred to in paragraph (a) above. Where the audit concerns the ENGINEER, the auditing agency will afford the ENGINEER an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.
  - (e) Records under paragraphs (a) and (b) above shall be maintained and made available during performance on EPA grant work under this agreement and until three years from date of final EPA grant payment for the project. In addition, those records which relate to any "dispute" appeal under an EPA grant agreement, or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.
  - (f) In exercising their right of access to the ENGINEER's books and records under the audit provisions of this agreement or any appendix thereto, the governmental agency or any other entity exercising such right of access shall be governed by the principles outlined in 40 CFR Part 35 Subpart E, Appendix D.
10. Price reduction for defective cost or pricing data.  
(The provisions of this clause are required by EPA only if the amount of this agreement exceeds \$100,000.00. The Owner may elect to utilize this clause if the contract amount is \$100,000 or less.)
- (a) If the EPA Project Officer determines that any price, including profit negotiated in connection with this agreement or any cost reimbursable under this agreement was increased by any significant sums because the ENGINEER, or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data (EPA Form 5700-41), then such price or cost or profit shall be reduced accordingly and the agreement shall be modified in writing to reflect such reduction.

- (b) Failure to agree on a reduction shall be subject to the "Remedies" clause of this agreement.  
(Note: Since the agreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, the Architect-Engineer may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Architect-Engineer. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

11. Subcontracts.

- (a) Any subcontractors and outside associates or consultants required by the ENGINEER in connection with the services covered by this agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as are specifically approved by the Owner during the performance of this agreement. Any substitution in such subcontractors, associates, or consultants will be subject to the prior approval of the Owner.
- (b) Except as otherwise provided in this agreement, the ENGINEER may not subcontract services in excess of thirty percent (30%) of the contract price to subcontractors or consultants without prior written approval of the Owner.

12. Labor standards.

To the extent that this agreement involves "construction" (as defined by the Secretary of Labor), the ENGINEER agrees that such construction work shall be subject to the following labor standards provisions, to the extent applicable:

- (a) Davis-Bacon Act (40 U.S.C. 276a-276-a-7);
- (b) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333);
- (c) Copeland Anti-Kickback Act (18 U.S.C. 874); and
- (d) Executive Order 11246 (Equal Employment Opportunity) and implementing rules, regulations, and relevant orders of the Secretary of Labor or EPA; and the ENGINEER further agrees that this agreement shall include and be subject to the "Labor Standards Provisions for Federally Assisted Construction Contracts" (EPA Form 5720-4) in effect at the time of execution of this agreement.

13. Equal employment opportunity.

In accordance with EPA policy as expressed in 40 CFR 30.420-5, the ENGINEER agrees that he will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.

14. Utilization of small and minority business.  
In accordance with EPA policy as expressed in 40 CFR 35.936-7, the ENGINEER agrees that qualified small business and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of EPA grant-assisted contracts and subcontracts.
15. Covenant against contingent fees.  
The ENGINEER warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty the Owner shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
16. Gratuities.
  - (a) The Owner may, by written notice to the ENGINEER, terminate the right of the ENGINEER to proceed under this agreement if it is found, after notice and hearing, by the Owner that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the ENGINEER, or any agent or representative of the ENGINEER, to any official or employee of the Owner or of EPA with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of this agreement: Provided, That the existence of the facts upon which the Owner makes such findings shall be in issue and may be reviewed in proceedings pursuant to Clause 6 (Remedies) of this agreement.
  - (b) In the event this agreement is terminated as provided in paragraph (a) hereof, the Owner shall be entitled (1) to pursue the same remedies against the ENGINEER as it could pursue in the event of a breach of the contract by the ENGINEER, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Owner) which shall be not less than three nor more than ten times the costs incurred by the ENGINEER in providing any such gratuities to any such officer or employee.
  - (c) The rights and remedies of the Owner provided in this clause shall not be exclusive and are in addition to any rights and remedies provided by law or under this agreement.

17. Patents.

If this agreement involves research, developmental, experimental, or demonstration work and any discovery or invention arises or is developed in the course of or under this agreement, such invention or discovery shall be subject to the reporting and rights provisions of Subpart D of 40 CFR Part 30, including Appendix B of said Part 30. In such case, the ENGINEER shall report the discovery or invention to EPA directly or through the Owner, and shall otherwise comply with the Owner's responsibilities in accordance with Subpart D of 40 CFR Part 30. The ENGINEER hereby agrees that the disposition of rights to inventions made under this agreement shall be in accordance with the terms and conditions of aforementioned Appendix B. The ENGINEER shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts involving research, developmental, experimental, or demonstration work.

18. Copyrights and rights in data.

- (a) The ENGINEER agrees that any plans, drawings, specifications, computer programs, technical reports, operating manuals, or other "Subject Data" (as defined in Appendix C to 40 CFR Part 30) are subject to the rights in the United States, as set forth in said Appendix C, including the right to use, duplicate and disclose, such manuals, etc., in whole or in part, in any manner for any purpose whatsoever, and have others do so. For purposes of this article, "grantee" as used in said Appendix C shall refer to the ENGINEER. If the material is copyrightable, the ENGINEER may copyright such, as permitted by said Appendix C, and subject to the rights in the Government as set forth in Appendix C, but the Owner and the Federal Government reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish and use such materials, in whole or in part, and to authorize others to do so. The ENGINEER shall include provisions appropriate to effectuate the purpose of this condition in all subcontracts expected to produce copyrightable "Subject Data."
- (b) All such "Subject Data" furnished by the ENGINEER pursuant to this agreement are instruments of his services in respect of the project. It is understood that they are not intended or represented to be suitable for reuse on any other project. Any reuse by the Owner without specific written verification or adaptation by the ENGINEER will be at the risk of the Owner and without liability or legal exposure to ENGINEER. Any such verification or adaptation will entitle the ENGINEER to further compensation at rates to be agreed upon by the Owner and the ENGINEER.

IN WITNESS WHEREOF, the parties herein have executed this Supplemental Agreement as of the day and year first written above.

CITY OF LEBANON, OREGON

By: Robert E. Noxon  
Title: City Administrator

CH2M HILL, INC.

By: M. J. Maxwell  
Title: Senior Vice-President