

A RESOLUTION AUTHORIZING THE MAYOR AND)
RECORDER TO ENTER INTO A CONTRACT FOR)
ENGINEERING SERVICES)

RESOLUTION NO. 51
for 1976

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

Section 1. That the Mayor and the Recorder of the City of Lebanon are hereby authorized and directed to enter into a contract with CH2M Hill, Inc., a professional engineering corporation, for on-site inspection for the upgrading and expansion of the existing wastewater treatment plant. A copy of the contract is attached hereto.

Passed by the Council by a vote of 5 for and 0 against and approved by the Mayor this 27th day of October, 1976.

Om. Soroquin Gonzales
Mayor

ATTEST:

Edwin R. Juez
Recorder

AGREEMENT TO FURNISH ENGINEERING SERVICES
TO THE
CITY OF LEBANON, OREGON
WASTEWATER TREATMENT PLANT IMPROVEMENTS

For the consideration hereinafter set forth, the firm of CH2M HILL, INC., a professional engineering corporation, hereinafter referred to as the ENGINEER, agrees to provide engineering services to the CITY OF LEBANON, OREGON, hereinafter referred to as the OWNER, for on-site inspection, for a PROJECT generally described as upgrading and expansion of the existing wastewater treatment plant.

ARTICLE 1.

The ENGINEER agrees to furnish one on-site inspector for an estimated period of 18 calendar-months to act as agent of the OWNER in his relations with the construction contractor(s) to provide on-the-job, day-to-day inspection of the work as defined in ARTICLE 4; to prepare monthly progress reports on the work; to determine the amounts of payments due the contractor(s), as set forth in the construction contract(s); and to keep all records, maps, and plans necessary for the preparation of drawings showing the project as finally constructed. Unless specifically included herein, all other requirements of 40 CFR Part 35, subpart E are hereby excluded.

ARTICLE 2.

As consideration for providing the services enumerated in ARTICLE 1, the OWNER shall pay the ENGINEER's Direct Salary expended for services, plus a percentage of Direct Salary for Salary Overhead, plus a percentage of Direct Salary for General Overhead, plus direct expenses in connection therewith, plus a Fixed Dollar Profit of Thirteen Thousand Two Hundred Eighty One Dollars (\$13,281). The Cost Ceiling represented by Direct Salary, plus Salary and General Overheads and direct expenses shall not exceed Eighty Eight Thousand Five Hundred Forty Two Dollars (\$88,542) without a formal Amendment of this Agreement.

In the event that services under this agreement are not completed by the ENGINEER within 18 months of the beginning of construction of this PROJECT, except by reason of fault of the ENGINEER, it is mutually agreed that compensation be renegotiated for any services required after the expiration of the 18 months.

ARTICLE 3.

Payment to the ENGINEER as prescribed in ARTICLE 2 is to be made within 30 days after date of billing the amount due for services rendered during the month based on salaries expended

plus Salary Overhead, plus General Overhead, plus Direct Expense, and a proportionate amount of the Fixed Dollar Profit.

For the purpose of monthly payment, the Salary and General Overheads shall be those rates specified in Article 4E and 4F. Upon completion of a final audit for any calendar year, a credit or payment may be made to correct the payment for work performed during said calendar year on cost reimbursement type elements.

Upon completion of ON-SITE INSPECTION SERVICES, and within 30 days after date of billing, the final amount due for the services rendered including any portion of the Fixed Dollar Profit for said service not previously paid.

ARTICLE 4.

It is further mutually agreed by the parties hereto:

- A. That, the ENGINEER will not begin work on any of the services listed in ARTICLE 1 until the OWNER directs him in writing to proceed, the City Administrator to have the authority to give such approval.
- B. That, the ENGINEER will indemnify and hold the OWNER harmless from and against all Workmen's Compensation and General Liability claims or demands arising out of the ENGINEER's performance of this Agreement. This indemnification shall not apply to claims or demands arising out of circumstances involving professional liability, except for those caused by negligence in the ENGINEER's performance of this Agreement.
- C. That, the on-site inspection personnel will make reasonable efforts to guard the OWNER against defects and deficiencies in the work of the contractor(s) and to help determine if the provisions of the Contract Documents are being fulfilled. Their day-to-day inspection will not, however, cause the ENGINEER to be responsible for these duties and responsibilities which belong to the construction contractor(s) and which include, but are not limited to, full responsibility for the techniques and sequences of construction and the safety precautions incidental thereto, and for performing the construction work in accordance with the Contract Documents.
- D. That, the ENGINEER's Direct Salary is defined as the amount of the wages or salaries of the ENGINEER's employees working on the PROJECT.

- E. That, the ENGINEER's Salary Overheads are defined as a percentage of Direct Salary necessary to cover all taxes, payments, and premiums measured by or applicable at the time of performance to such wages or salaries, such as, but not limited to, Workmen's Compensation, Insurance, Social Security, State and Federal unemployment Insurance, medical-hospital insurance, salary continuation insurance, pension plan costs and pro rata allowances for vacation, sick leave, and holiday pay. Said projected percentage for this Agreement is 36.3 percent of direct wages and salaries of the ENGINEER's employees.
- F. That, the ENGINEER's General Overhead Costs are defined as a percentage of Direct Salary and consists of those general and administrative costs, exclusive of salary overheads included under Paragraph E, allowable under the cost principles of 41 CFR 1-15.4 that are actually incurred by the ENGINEER during the period of performance of the services. Said projected General Overhead Costs for this Agreement are 108.7 percent of Direct Salary Costs.
- G. That, the ENGINEER's direct expenses are defined as the costs incurred on or directly for the PROJECT, other than the Salary and General Overhead costs. Such direct expenses shall be computed on the basis of actual purchase price for items obtained from commercial sources and on the basis of usual commercial charges for items provided by the ENGINEER. Direct expenses shall include, but not be limited to, necessary transportation costs, including mileage at the rate of fifteen cents (\$0.15) per mile when the ENGINEER's own automobiles are used, meals and lodging, laboratory tests and analyses, computer services, magnetic card typewriter service, telephone, printing, binding, and multilith charges.
- H. That, the OWNER reserves the right to request replacement of any on-site inspection personnel furnished by the ENGINEER or to furnish such personnel from the OWNER's own forces, subject to the approval of the ENGINEER, as described below.
- I. That, if the OWNER furnishes the on-site inspection personnel, qualifications of such personnel shall be subject to the review and approval of the ENGINEER. Such personnel also shall be subject to the direct control of the ENGINEER in matters relating to the PROJECT, and they shall follow the established procedures of the ENGINEER for PROJECT inspection as completely as they would if they were directly employed by the ENGINEER.

- J. In the event the person primarily responsible for inspection services is furnished by the OWNER, the applicable payments to the ENGINEER for SERVICES DURING CONSTRUCTION shall be increased by an amount to be negotiated.
- K. That, if payment of the amounts due as prescribed in ARTICLE 2, or any portion thereof, is not made within the period specified in ARTICLE 3, interest on the unpaid balance thereof will accrue at the rate of twelve percent (12%) per annum and become due and payable at the time said overdue payments are made.
- L. That, 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 affecting the ENGINEER's payments shall be mandatorily arbitrated upon unilateral request of the ENGINEER. This article shall modify and take precedence over Appendix C-1 to 40 CFR Part 35, subpart E.
- M. That, if any portion of the PROJECT covered by this Agreement and designed or specified by the ENGINEER shall be suspended, abated, or abandoned, the OWNER shall pay the ENGINEER for the services rendered for such suspended, abated, or abandoned work, the payment to be based insofar as possible on the amounts established in this Agreement or, where the Agreement cannot be applied, on a basis to be negotiated.
- N. That, in the event of any action brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for fees, costs, and expenses including attorney's fees as may be set by the Court.
- O. That, in the event of any legal or other controversy requiring the services of the ENGINEER in providing expert testimony in connection with the PROJECT, except suits or claims by third parties against the OWNER arising out of errors or omissions of the ENGINEER, the OWNER shall pay the ENGINEER for services rendered in regard to such legal or other controversy, including costs of preparation for the controversy, on a basis to be negotiated.

- P. That, the provisions of EPA "Appendix C-1 to 40 CFR Part 35, subpart E, which is attached as Attachment 1 to this Agreement is hereby made a part of this Agreement except as modified herein.
- Q. That, the OWNER will pay the ENGINEER for labor and expenses incurred in satisfying the requirements and assisting in any audit required by the OWNER, the United States Environmental Protection Agency, the Comptroller General, the United States Department of Labor, the State Regulatory Agency or any of their duly authorized representatives. The basis of payment will be defined by an Amendment to this Agreement.
- R. That, the scope of work as defined in ARTICLE 1 is based on those Federal regulations in effect on the date of execution of this Agreement. Regulations promulgated after the date of said execution shall be incorporated by Amendment to this Agreement as required. If the ENGINEER's scope of work or level of effort is changed by these regulations, the basis of payment as defined in ARTICLE 2 shall be renegotiated as an Amendment to this Agreement.
- S. That, this Agreement is to be binding on the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other.

ARTICLE 5.

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in triplicate this 27 day of October, 1976.

For THE CITY OF LEBANON, OREGON

By S/ M Scroggin Gonzales
M. Scroggin Gonzales
Mayor

For CH2M HILL, INC.

By R. C. Humphrey
R. C. Humphrey, Director
Wastewater Collection Systems

EPA REQUIRED PROVISIONS FOR ENGINEERING CONTRACTS
(APPENDIX C-1 to 40 CFR, PART 35, SUBPART E)

APPENDIX C-1 REQUIRED PROVISIONS—CONSULTING ENGINEERING AGREEMENTS

1. General.
2. Responsibility of the Engineer.
3. Scope of Work.
4. Changes.
5. Termination.
6. Remedies.
7. Payment.
8. Project Design.
9. Audit; Access to Records.
10. Price Reduction for Defective Cost or Pricing Data.
11. Subcontracts.
12. Labor Standards.
13. Equal Employment Opportunity.
14. Utilization of Small or Minority Businesses.
15. Covenant Against Contingent Fees.
16. Gratuities.
17. Patents.
18. Copyrights and Rights in Data.

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.

(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) 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 (c) and (d) 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.

(b) 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.

(c) 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).

(d) 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.

(e) By written consent signed by all the parties to this agreement and containing a specific reference hereto, the limitations and restrictions contained in paragraphs (c) and (d) 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.

RULES AND REGULATIONS

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.

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