

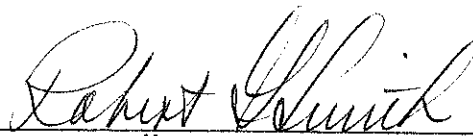
A RESOLUTION AUTHORIZING THE MAYOR
AND RECORDER TO EXECUTE CONTRACT
AGREEMENT WITH OPERATIONS MANAGEMENT
INTERNATIONAL, INC., FOR OPERATION
OF LEBANON'S WASTEWATER TREATMENT PLANT.)
)
)
)
)

RESOLUTION NO. 22
for 1982

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

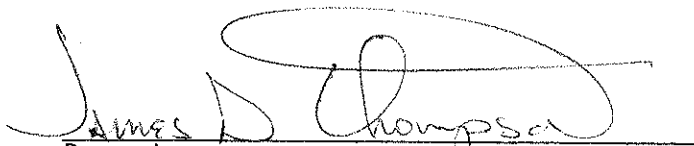
Section 1. That the Mayor and Recorder/Administrator of the City of Lebanon are hereby authorized and directed to enter into an agreement with Operations Management International, Inc., for operation of Lebanon's Wastewater Treatment Plant effective June 1, 1982. A copy of said agreement is attached hereto and made a part hereof.

Passed by the Council by a vote of 4 for and 0 against and approved by the Mayor this 9th day of June, 1982.



Mayor

ATTEST:



Recorder

AGREEMENT

THIS AGREEMENT made and entered into this 18th day of June, 1982, by and between The City of Lebanon, Oregon, (hereinafter referred to as the Owner), whose address for any formal notice required by this Agreement is 925 Main Street, Lebanon, Oregon 97355, and Operations Management International, Inc., a corporation organized and existing under the laws of the State of California doing business as OMI, Inc. of Oregon (hereinafter referred to as OMI), whose address for any formal notice required by this Agreement is 800 Rockmead Drive, Suite 180, Kingwood, Texas 77339.

WITNESSETH

WHEREAS, Owner owns a wastewater treatment plant (hereinafter referred to as Treatment Plant) located in or near the The City of Lebanon, and

WHEREAS, OMI is a corporation providing specialized management, operation, and maintenance services for water and wastewater treatment systems; and

WHEREAS, Owner desires to employ the specialized services of OMI in the management, operation and maintenance of Owner's Treatment Plant and OMI desires to perform such services;

NOW THEREFORE, Owner and OMI have concluded the following Agreement.

1. AGREEMENT INTRODUCTION

- 1.1 The above preamble is a part of this Agreement.
- 1.2 This Agreement shall supercede and nullify from the date hereof all previous offers, service fee quotations, representations and warranties made, whether written or verbal, between the two parties with respect to the management, operation and maintenance of Owner's Treatment Plant.
- 1.3 This Agreement, including its referenced Appendices and Amendments, is the entire agreement between Owner and OMI with respect to the management, operation and maintenance of Owner's Treatment Plant.

2. DEFINITIONS

- 2.1 Benefit Plans shall mean programs such as health insurance, group life insurance, and paid vacation periods normally provided as a part of OMI's overall compensation package.
- 2.2 NPDES means National Pollutant Discharge Elimination System.
- 2.3 Duly Authorized Representative means a specific representative of either of the two parties designated by written notification upon the effective date of this Agreement.
- 2.4 Certified Operators means Treatment Plant operations personnel who have met the certification requirements for wastewater

treatment plant operators established by the State of Oregon.

2.5 Capital Expenditures are defined as any expenditure for the purchase of new equipment or facility items, the installation of which significantly extends service life, which are considered capital expenditures in accordance with generally accepted accounting principles. These expenditures usually exceed One Thousand Dollars (\$1,000) each.

2.6 Operating Expenditures are defined as costs of every kind and nature that OMI shall determine necessary to pay or become obligated to pay because of or in connection with the management, operation and maintenance of the Treatment Plant determined on an accrual basis in accordance with generally accepted accounting principles.

2.7 Maintenance Expenditures are defined as those costs incurred by OMI to perform those routine and/or repetitive activities required or recommended by the equipment or facility manufacturer or OMI to maximize the service life of the equipment or facility.

2.8 Equipment, Vehicle or Facility Repair are defined as those costs and expenses for labor, materials and subcontractors incurred by OMI to perform those non-routine/non-repetitive activities required for operational continuity, safety, and performance generally due to failure of the

Equipment, Vehicle, or Facility or some component thereof.

2.9 Cost is defined as actual cost for labor, labor overhead, general overhead, materials, supplies, equipment and other services necessary to complete the work.

3. LOCATION

OMI agrees to provide all of those services that it deems necessary for the management, operation and maintenance of the following facilities:

3.1 All equipment, grounds and facilities now existing within the present property boundaries of Owner's Treatment Plant located at:

33110 Tennessee Road
Lebanon, Oregon 97355

3.2 All equipment, grounds and facilities now existing within the present property boundaries of the pump stations described as follows:

- a. The West Side Lift Station
- b. The East Side Lift Station

4. OWNERSHIP

4.1 All facilities and equipment existing within the boundaries of the Treatment Plant described in Article 3 herein shall remain the property of the Owner.

4.2 The provision of Article 4.1 above shall also apply to facilities and equipment installed at the

direct cost of Owner during the term of this Agreement.

4.3 OMI, at its option, may add facilities or equipment to improve the operation of the Treatment Plant. Said facilities and equipment shall remain the property of OMI upon termination of this Agreement. Said equipment and/or facilities will be removed by OMI within ninety (90) days after termination of this Agreement. Provided however, that said facilities and equipment shall not be removed by OMI if such removal would cause irreparable damage to the remaining facilities and equipment of Owner.

4.4 All vehicles, such as autos, pickup trucks, dump trucks, dumpsters, trailers, tractors, and boats, presently assigned to the facility will be provided for OMI's use in providing services for the Treatment Plant. Vehicles assigned to OMI which shall remain the property of the Owner are shown on the attached Appendix A. All said vehicles transferred to OMI for use are to be in good working order. OMI will inspect the vehicles and maintenance records of Owner for vehicles described in Appendix A. Based upon a satisfactory result of the inspection, OMI will assume maintenance responsibility for said vehicles. Notwithstanding the above, Owner will pay all costs of repair to the Sludge Truck that exceed Six Hundred Dollars (\$600) for the initial ninety (90) days of this Agreement. OMI will invoice Owner for all such Costs within one hundred twenty (120) days after the effective date of this Agreement and Owner will pay said invoice in accordance with Section 7.3.

4.5 Upon request by OMI, Owner will remove any facility or equipment that OMI determines to be surplus or redundant to the performance of its duties. OMI and Owner shall mutually designate an area on which Owner may store supplies and equipment. Owner shall maintain responsibility and ownership of said supplies and equipment.

5. SCOPE OF SERVICES

5.1 Within the design capacity and capability of the Treatment Plant, OMI will provide the required expertise to manage, operate and maintain the facilities noted in Article 4, herein, so that effluent discharged therefrom to receiving water meets the requirements of NPDES Permit No. 3193-J dated September, 1980 as modified March 10, 1982. (Appendix B) It is agreed that OMI at its sole discretion can alter the process and/or facilities to achieve the objectives of this Agreement.

OMI shall not be responsible to meet the effluent quality limitations of Owner's NPDES permit unless the Treatment Plant influent routinely contains adequate nutrients to support operation of Treatment Plant biological processes; is free from abnormal or biologically toxic substances which cannot be removed by the existing process and facilities; or interfere with treatment processes in Treatment Plant using the existing process facilities; dischargers into Owner's sewer system do not violate any and all regulations as so stated in the Industrial Cost Recovery, Municipal Code No. 13.04.450; and unless the flow, influent BOD₅, and/or suspended solids do not exceed the Treatment Plant design parameters which are 3.0

million gallons per day (average dry weather flow), 3,300 pounds of BOD₅ per day, 2,550 pounds of suspended solids per day, and a daily peaking factor of 4.8 times design flow, BOD₅, or suspended solids.

Monthly averages of effluent quality criteria as established by the NPDES permit shall be compared to specific NPDES permit limitations to establish whether OMI's obligations under this Agreement are met.

In the event any one of the Treatment Plant influent characteristics, suspended solids, BOD₅, or flow, exceeds design parameters stated above, OMI shall return the plant effluent to the characteristics required by the NPDES permit within twenty (20) days after Treatment Plant influent characteristics return to within design parameters. OMI shall not be responsible for fines or legal action as a result of discharge violations within the period that influent exceed design parameters and the twenty (20) day recovery period.

- 5.2 OMI will bear the cost of Maintenance Expenditures and provide required maintenance for all equipment, vehicles and facilities at the locations noted in Article 4 herein. OMI will maintain documentation of routine maintenance to indicate that such maintenance was performed in accord with manufacturers' specifications. Upon reasonable request, the Duly Authorized Representative of Owner shall have the right to inspect these records during normal business hours. Maintenance and repairs for all equipment,

vehicles and facilities shall not include correction of problems resulting from flood, fire, or other extraordinary occurrences outside the control of OMI.

- 5.3 OMI will bear the Cost of Equipment, Vehicle and Facilities Repair during the term of this Agreement, provided the aggregate amount OMI shall be required to pay does not exceed Fourteen Thousand Dollars (\$14,000), during the first year of the Agreement.

Owner will be provided with an accounting of Equipment, Vehicle and Facilities Repair expenditures and will be promptly informed when such expenditures exceed Eleven Thousand Two Hundred Dollars (\$11,200) per year. OMI will provide a detailed invoice of Equipment, Vehicle and Facilities Repair expenditures over the Fourteen Thousand Dollars (\$14,000) limit to Owner for reimbursement. Owner will pay said invoice in accordance with Section 7.3.

Items defined as Capital Expenditures are not included within the Scope of Services of this Agreement and will be subject to approval and funding by Owner. OMI has the right to make reasonable emergency Capital Expenditures if such expenditures are necessary to continue operation of the Treatment Plant in order to provide for public safety and environmental protection. Notwithstanding the above, OMI will make best efforts to secure permission from Duly Authorized Representative of Owner to make such expenditures. Owner will reimburse OMI for these emergency

Capital Expenditures in accordance with Section 7.3.

- 5.4 OMI shall pay all Operating Expenditures incurred in normal Treatment Plant operations. Materials ordered by Owner before the effective date of this Agreement will be paid for by Owner.

Owner will have on hand or on order a thirty (30) day inventory of supplies listed in Appendix C on the effective date of this Agreement. OMI will invoice Owner for any costs incurred in order to bring the supplies to the thirty (30) day level. Owner will pay said invoice in accordance with Section 7.3. Upon termination of this Agreement, OMI will leave the inventory in place as contained in Appendix C.

The following list contains items specifically excluded from OMI's payment obligations.

- a. Capital Expenditures as defined in Article 2.5 of this Agreement
- b. Requested changes in work scope by Owner
- c. Consequential damages
- d. Flood and fire damages
- e. Repairs to sewage collection lines, force mains, or the Treatment Plant outfall
- f. Other Costs resulting from extraordinary occurrences described in Section 13.1

- 5.5 OMI will staff the Treatment Plant with full-time Certified Operators experienced in wastewater treatment process control and maintenance procedures.
- 5.6 OMI agrees to employ all current personnel of Owner assigned full-time to the operation and maintenance of the Treatment Plant as of the date of this Agreement, at wages and with Benefit Plans similar to those wages and Benefits Plans provided by Owner. OMI will continue to provide employment to all current personnel so long as their positions are necessary to OMI's performance under this Agreement and they continue to perform their duties in a satisfactory manner.

Additionally, OMI will assume the hours of accrued vacation liability for the employees joining OMI as of the effective date of this Agreement. However, should any of the subject employees leave the employ of OMI prior to termination of this Agreement, OMI will invoice Owner for the hours of vacation carried over from the Owner.

In the event that this Agreement is terminated for any reason, Owner will reimburse OMI the balance of the hours of vacation accrual carried over from Owner for subject employees. A written, itemized list of the hours of vacation accrual will be provided by Owner to OMI within fourteen (14) days of the effective date of this Agreement.

- 5.7 OMI will prepare, within ten (10) days after completion of laboratory analyses, all NPDES permit reports and submit these to Owner for transmittal to appropriate agencies.

- 5.8 Owner shall maintain all existing warranties, guarantees, easements, and licenses that have been granted to Owner as owner of the equipment and facilities covered by this Agreement. Owner will pay all taxes associated with the equipment, facilities and operation of the Treatment Plant except those measured by the income of OMI. Except as provided herein below, and except for those measured by the income of OMI, Owner shall pay all taxes associated with the equipment, facilities and operation of the treatment plant. OMI shall pay all real and personal property taxes which may be hereafter levied against any of the equipment, facilities and real property used in connection with the operation of the treatment plant, and shall further hold Owner harmless from the payment or consequences of such real or personal property being placed on the property tax roles. In the event said property is placed upon the property tax roles, OMI reserves the right to contest any such taxes, or the placement of such property on the tax roles, in administrative proceedings and/or in Court prior to any payment of such taxes. Owner will assist OMI in any such proceedings or Court. In the event OMI loses the appeal from the taxes levied, either party may terminate this Agreement immediately.
- 5.9 If requested by OMI, Owner shall provide any and all heavy equipment then owned by Owner needed by OMI to discharge its obligations under this Agreement. Owner shall supply this equipment to OMI within a reasonable time. Owner shall make no charge to OMI, for the use of the equipment or the operator.
- 5.10 It is mutually agreed by Owner and OMI that the

compensation stated in Article 6 is for the operation of the Treatment Plant at existing wastewater flow and characteristics, and that a ten percent (10%) increase or decrease in flow, BOD₅, or suspended solids shall cause OMI to notify Owner, and Owner shall adjust compensation as stated in Article 6.4. The increase or decrease in flow, BOD₅, or suspended solids shall be based on the daily average for a minimum period of twelve (12) months. The present Treatment Plant influent wastewater flow rate and characteristics are shown in Appendix D. BOD₅ and suspended solids loading are calculated as follows:

$$\text{BOD}_5 \text{ lbs/day} = \text{12 month average daily plant influent BOD}_5 \text{ concentration (mg/l)} \times \text{(12 month average effluent flow in million gallons per day)} \times \text{(8.34 lb/gal)}.$$

$$\text{Suspended solids} = \text{(12 month average influent suspended solids concentration (mg/l)} \times \text{(12 month average effluent flow in million gallons per day)} \times \text{(8.34 lb/gal)}.$$

5.11 OMI shall maintain the present industrial waste sampling and laboratory analysis program as part of the Scope of Services. Results of all industrial sampling and testing shall be reported to Owner's Duly Authorized Representative within

ten (10) days after the laboratory analyses are completed.

Any changes in industrial sampling or testing that are required by governmental agencies that increase OMI's cost shall be a change in scope and subject to the terms and conditions of Section 6.4. The industries that are presently being sampled and the parameters being tested are indicated in the attached Appendix E.

- 5.12 Disposal of screenings, grit and sludge by OMI is limited to hauling to the existing and presently used disposal site. OMI in conjunction with Owner will locate a suitable solids disposal site.

Insufficient capacity for sludge disposal exists at the Treatment Plant. OMI shall conduct a sludge disposal study and recommend alternative methods of disposal to Owner by October 31, 1982. Owner shall chose one of recommended alternatives by November 30, 1982. OMI and Owner will agree on an implementation schedule. Any changes in sludge disposal that increase OMI's cost shall be a change in scope and subject to the terms and conditions of Section 6.

- 5.13 All laboratory testing and sampling presently required by the NPDES permit will be performed by OMI or at a certified laboratory at OMI's expense.

- 5.14 OMI has the right to use subcontractors and consultants to satisfy their obligations under this Agreement. Owner will provide OMI with a

list of subcontractors preferred by Owner and OMI agrees to use its best efforts to select a subcontractor from said list.

5.15 Owner may at any time request OMI to perform services that are incidental to the Scope of Services. Such services will be invoiced to Owner at actual Cost plus fifteen percent (15%), or based on a negotiated lump sum. Cost is defined in Section 2.9. Owner will pay said invoice in accordance with Section 7.3.

6. COMPENSATION

6.1 Owner shall pay to OMI as compensation for services performed in accordance with the provisions of Article 5 herein, except for those additional amounts provided for in Article 5, the Base Fee of Three Hundred Ten Thousand Eight Dollars (\$310,008) annually for each year during the term of this Agreement, with adjustments as hereinafter specified. The Annual Base Fee shall be paid in twelve (12) equal monthly installments. Owner will pay in accordance with Section 7.1.

6.2 The Base Fee to OMI under this Agreement shall be renegotiated annually three months prior to anniversary of the effective date hereof, failing to do so, OMI may accept the then current Base Fee for the upcoming contract year or may give notice of termination of this Agreement. In the event OMI elects to terminate this Agreement, OMI and Owner will operate in accordance with Section 10.7, additionally, OMI's monthly portion of the

Base Fee shall be increased by ten percent (10%) for the transition period.

- 6.3 Owner will pay as additional compensation to OMI, extraordinary increases in electricity and fuel costs. The additional compensation will be calculated based upon the actual consumption of electricity or fuel and will reflect OMI's actual Costs. Such Costs may be invoiced quarterly. Owner will pay in accordance with Section 7.3. For the first year of this Agreement an extraordinary increase will be any increase over fifteen percent (15%). This percent will be renegotiated annually in accordance with Section 11.
- 6.4 In the event that a change in the Scope of Services provided by OMI occurs or is mutually agreed upon with Owner, and this Agreement is so amended, Owner and OMI will negotiate a commensurate adjustment in Base Fee to OMI.
- 6.5 All compensation adjustments resulting from changes in the Scope of Services provided by OMI shall be retroactive to the date the new or increased level of service is first provided by OMI.
- 6.6 A change in the Scope of Services necessary for Treatment Plant management, operation or maintenance, reporting requirements, personnel qualifications or Benefit Plans required by any governmental agency shall be a basis for an adjustment in compensation to OMI from Owner in accordance with the provisions of Section 6.4 herein. OMI shall negotiate in good faith with

Owner to determine an equitable adjustment to OMI's compensation under this Agreement. OMI shall not be required by Owner to perform such services without such equitable adjustment of compensation.

7. PAYMENT OF COMPENSATION

7.1 The Base Fee for each year during the term of this Agreement shall be payable in twelve (12) equal monthly installments, with the first such installment being due on the first day of the period for which the Base Fee is charged, and a like amount on the first day of each month thereafter during said period.

7.2 All other compensation to OMI is due upon receipt of OMI's invoice and payable within fifteen (15) days.

7.3 Owner shall pay interest at an annual rate determined by the First Interstate Bank, located in Oregon, prime rate plus one and one half (1½) percent on payments not paid within fifteen (15) calendar days, such interest being calculated from the due date of the payment.

8. INDEMNITY AND LIABILITY

8.1 OMI hereby agrees to, and shall hold Owner, its elective and appointive boards, officers and employees, harmless from any liability or damages for bodily injury, including death, as well as from claims for property damage which may be

proximately caused by OMI's negligent operations under this Agreement, whether such operation be by OMI or by subcontractor of OMI. Owner agrees to and shall hold OMI, its officers and employees harmless from any liability or damages for bodily injury, including death, which may arise from such liability due to any discharge, dispersal, release, or escape, not proximately caused by OMI's negligence and to undertake the defense of such a liability claim and pay any judgement against OMI and/or Owner or agrees to settlement. Owner will name OMI as an additional insured on any comprehensive general liability insurance policy naming Owner as the policyholder.

- 8.2 Inclusive of the fines and civil penalties maximum aggregate amount listed in the provisions of Section 8.1 herein, Owner and OMI agree that under no circumstances shall OMI's aggregate liability for nonperformance under this Agreement exceed the sum of the fees paid to OMI from the time Owner notifies OMI of its nonperformance until that time OMI performs.
- 8.3 OMI's liability to Owner under this Agreement specifically excludes any and all indirect or consequential damages arising from the management, operation and maintenance of Treatment Plant.

9. INSURANCES

Owner and OMI shall obtain and maintain the following insurance coverages throughout the term of this Agreement.

9.1 Owner shall purchase and maintain property damage insurance for all property contemplated by this Agreement, including vehicles. Any property not properly or fully insured shall be the financial responsibility of Owner. OMI shall have no liability to Owner with respect to loss, damage, and destruction covered by such policies. Owner shall provide OMI with a waiver of subrogation for property insurance policies and transmit evidence to OMI of such waivers within 90 days after the effective date of this Agreement.

9.2 The Owner shall carry and maintain, at its own expense, insurance unconditionally covering liability for personal injury or property damage resulting from the operation of all vehicles and equipment, in an amount not less than One Hundred Thousand Dollars (\$100,000) for death or injury of one person, and not less than Two Hundred Fifty Thousand Dollars (\$250,000) for death or injury of more than one person, and not less than Fifty Thousand Dollars (\$50,000) for property damage. OMI shall be a named an additional insured on such policy.

The Owner and OMI, their agents or employees, shall comply with all the terms and conditions of the policies of insurance, including the immediate reporting of all accidents to the Owner and the

Insurer, and do all things necessary or proper to protect or preserve the other party's rights as a named insured in such policies. All policies covering such vehicles shall be endorsed to protect, as their interest may appear, the Owner, or OMI.

9.3 Owner shall provide and maintain all necessary state vehicle licenses and license tags and the Owner shall indemnify and save OMI harmless from any damage or penalty OMI may suffer by reason of the failure of any vehicle to be so licensed. OMI will reimburse Owner for cost of said licenses and tags.

9.4 Owner shall name OMI as additional insured on all insurance coverages required by the action of any governmental agency related to the nature and type of material processed in the Treatment Plant.

9.5 OMI shall maintain, during the life of this Agreement, statutory workmen's compensation coverage for all its employees at the site of the Treatment Plant, and in case any work is sublet, OMI shall require its subcontractor similarly to provide workmen's compensation coverage for all of the subcontractor's employees, unless such employees are covered by the protection afforded OMI. In case any class of employees engaged in work under this Agreement at the Treatment Plant is not protected under compensation law, OMI shall provide, and shall cause each subcontractor to provide, adequate protection of employees not otherwise protected. OMI indemnifies Owner for any damages resulting to Owner from failure of

either OMI or OMI's subcontractors to provide or maintain such coverage.

9.6 OMI shall provide and maintain during the life of this Agreement, comprehensive general liability insurance in an amount not less than One Million Dollars (\$1,000,000) combined single limits for bodily injury and/or property damage.

9.7 OMI shall furnish Owner with satisfactory proof of coverage of the insurance required, and each carrier shall give Owner at least thirty (30) days' notice of the cancellation of any policy during the effective period of this Agreement.

10. TERM AND TERMINATION

10.1 The initial term of this Agreement shall be one year and shall commence on the day that services are first rendered by OMI. That date shall be no later than the first day of June 1982, and shall continue in accordance with Article 11, unless terminated as provided by this Article 10.

10.2 This Agreement may be terminated by Owner for breach of contract terms by OMI. Such termination will be effected by Owner giving OMI written notice to correct and OMI's subsequent failure to cure within sixty (60) days.

10.3 This Agreement may be terminated by OMI in the event of Owner's breach of contract terms by OMI giving written notice of such breach and Owner's failure to correct within sixty (60) days.

- 10.4 In accordance with Sections 10.2 and 10.3, the terminating party after sixty (60) days shall provide written notice to the other of intent to terminate. Termination will be effective ninety (90) days from date of receipt of written notice. Notwithstanding the above, if Owner's breach of contract is due to nonpayment of OMI's invoices, then OMI may terminate immediately without the sixty (60) and ninety (90) day grace period.
- 10.5 In the event there is a failure to automatically renew this Agreement as provided for by Section 11 as a result of notice of cancellation or OMI terminates this Agreement because of nonperformance on the part of the Owners, then OMI shall be entitled to a demobilization fee equal to actual Cost of demobilization up to twelve and one half percent (12½%) of the adjusted Base Fee. The demobilization fee shall be paid to OMI by Owner in accordance with Section 7.3. Such Cost shall include items like employee termination Costs, supervisor relocation Cost (not to exceed a distance greater than that equal to the distance between Lebanon, Oregon and Houston, Texas), shipping and packing Costs of OMI's property. This section in no manner creates a right to terminate this Agreement by Owner other than that provided in Section 10.2.
- 10.6 Each party shall retain any and all remedies at law and equity for any dispute between the parties.
- 10.7 Upon notice of termination by Owner, OMI and Owner will agree to an action plan which will enable the Owner to resume operation in an organized fashion.

Any additional services provided by OMI as a result of the above action plan will be reimbursed to OMI by Owner based on a negotiated lump sum fee in accordance with Section 7.3.

11. RENEWAL

This Agreement shall be automatically renewed for successive terms of Three (3) years each, unless notice of cancellation is given no less than one hundred eighty (180) days prior to the date of expiration of the current term. The first renewal will be automatic unless OMI fails to meet its obligations under the terms of this Agreement. Notwithstanding the above successive terms and in accordance with Article 6.2, OMI and Owner agree annually to negotiate Sections 5.3, 6.1, and 6.3.

12. LABOR DISPUTES

In the event labor stoppages by Owner's employee groups or Unions (e.g., picketing) cause a disruption in OMI's employees entering and working at the Treatment Plant, Owner, with OMI's assistance or OMI, at its own option, may seek appropriate injunctive court orders or temporary, additional, qualified personnel. During the labor dispute, OMI shall operate the facilities on a best-efforts basis until labor relations are normalized, and shall not be liable for any fines or penalties for failure to meet effluent quality required by this Agreement.

13. FORCE MAJEURE

13.1 Neither party shall be liable for its failure to perform its obligations under this Agreement if performance is made impracticable, abnormally difficult, or costly, due to any unforeseen occurrence beyond its reasonable control, including, but not limited to, an Act of God, fire, flood, riot, war, sabotage, governmental law, ordinance, rule or regulations, whether valid or invalid; inability to obtain electricity or other type of power, raw material, equipment or transportation; and/or any similar or different supervening contingency.

13.2 The party invoking Force Majeure shall notify the other party immediately by verbal communication and in writing by certified mail of the nature and extent of the contingency within fourteen (14) days after its occurrence.

13.3 A declaration of Force Majeure by either party does not relieve the parties from obligations not affected by the conditions causing Force Majeure under this Agreement. During Force Majeure, Owner and OMI will negotiate a Base Fee that reflects compensation for services being provided Owner by OMI.

14. FUTURE CONSTRUCTION

14.1 OMI, along with Owner and Owner's designated Consulting Engineering firm, will work together to maintain accessibility and minimize disruption and outages to the existing plant when future plant improvements are under construction.

14.2 OMI will work with the Owner and Owner's Consulting Engineer and Contractor to coordinate activities. In the event a critical piece of equipment must be taken out of service, a plan shall be developed and approved by all parties ten (10) working days prior to the scheduled outage, and addressing the impact on plant operations, length of outage, and methods of removing and reactivating the equipment to full service. Owner shall pay all extra costs associated with said equipment outage. OMI shall not be responsible for effluent violations due to such interruptions.

14.3 In the event Owner's Contractor or Subcontractor cause damage to Treatment Plant under OMI's responsibility, Owner shall immediately notify OMI's designated representative and shall take all actions necessary to minimize further damage.

Owner shall direct, and the Contractor shall have the responsibility for, completing all repairs expeditiously within three (3) days, or in a time period agreed to by OMI. In addition, OMI shall have the right, and Owner shall enforce this right, to make reasonable repairs for the Contractor and recover said costs from Owner. If construction work on future plant improvements causes conditions which result in increased costs for OMI, Owner agrees to reimburse OMI for these additional Costs Plus fifteen (15) percent, or a negotiated lump sum. Owner will pay said costs in accordance with Section 7.3.

14.4 A change in Scope of Services caused by any Future Construction shall be compensated for under the provisions of Section 6.6.

15. AMENDMENTS

This Agreement may be modified only by written amendment signed by both parties.

16. WAIVER

A waiver on the part of either party of any term, provision, or condition of this Agreement shall not constitute precedent, nor bind either party to a waiver of any succeeding breach of the same or any other term, provision, or condition of this Agreement.

17. APPLICABLE LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon.

18. ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of each of the parties hereto, but any assignment of this Agreement by either party without the prior written consent of the other party shall be void.

19. HEADINGS

Section headings used in this Agreement are inserted for convenience of reference only and shall not affect the content of its various provisions.

20. NOTICE

All notices shall be in writing and delivered in person or transmitted by certified mail, return receipt requested, postage prepaid, to the address noted in this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

OPERATIONS MANAGEMENT
INTERNATIONAL, INC.
DBA OMI, Inc. of Oregon

CITY OF LEBANON, OREGON

By:

Michael M. Stark
President

By:

Rakot Ranaivosoa
Mayor

By:

James D. Thompson
Administrator/Recorder

Date: June 18, 1982

Date: June 18, 1982

APPENDIX A

Vehicles and Mobile Equipment Assigned to OMI
Which Continue as Property of Owner

Description of Vehicle (License, Serial No. & Make)	Year Manufactured	Year Acquired By Owner	General Condition *Attach complete description	Depreciable Value of Vehicle	Useful Remaining Service Life	Blue Book Value	Estimated Repair or Maint. Costs (Section 4.4)	Present Use In Plant
Lic. E137314 SN 7835418505 Dodge ½ ton pickup	1979	1979	Good					
Lic. E106995 SN ME613Y181060 GMC - modified tank truck	1971	1971	Good					

APPENDIX B

NPDES Permit for each Treatment Facility
and Mutually Agreed Exclusion

1. Treatment Facility name: City of Lebanon Wastewater Treatment Facility

NPDES Permit number 3193-J dated September 12, 1980, as modified on March 10, 1982.

Is facility excluded from meeting discharge requirements for 90 days at effective date of contract? NO

If yes, attach as part of this Agreement, a complete description of the corrective measures to be undertaken to bring the facility into compliance, the costs to be borne by each party of this Agreement, and the completion dates and compliance schedule.

If facility cannot be brought into compliance, attach letter of understanding entered into by both parties.

Copy of existing NPDES Permit for above facility is attached to this Agreement and is a part of this Agreement.

APPENDIX C

Thirty Day Materials Supply

1. Chlorine - 1.5 one ton cylinders @ \$240 = \$360
2. Polymer - 30 day supply = \$500
3. Laboratory chemicals - various = \$ 50
4. Lubricants - (grease and oils) = \$ 50

Total approximately = \$960

APPENDIX D

Average Flow and Wastewater Characteristics

1. The average flow from the Lebanon, Oregon Wastewater Treatment Facility for the purposes of this Agreement is 3.345 million gallons per day. This flow rate is based on flow readings collected daily (daily, weekly, etc.) and represents the arithmetic average of all monthly flow averages collected for May 1981, through April 1982. Attached to and a part of this Agreement is a description of the method used to measure the effluent flow.
2. The average concentration of BOD₅ and suspended solids for the purposes of this Agreement are 79 mg/l and 78 mg/l, respectively. Based on the average flow, this represents a plant loading of 2,176 lbs. of suspended solids per day and 2,204 lbs. of BOD₅ per day. Attached to and a part of this Agreement is a description of the method and frequency of sample collection for each parameter and of the methods of analysis.

METHOD AND FREQUENCY OF SAMPLE COLLECTION

ATTACHMENT TO APPENDIX D

Our flow monitoring system consists of two 18" parshall flumes, measuring secondary effluent and screened storm flows separately. Each flume is monitored by Drexelbrook Flush Flow Meters. A Ventor Root Flow Integrater counts total flow, which is recorded once every 24 hours.

We have two automatic samplers. The influent pulls from the main line entering the plant, while the effluent sampler is taken at the out-fall box just prior to discharge. Both these samplers are supposed to have flow proportional operation, however these have never operated properly. Presently, they take a constant volume every 20 minutes. Every 24 hours the sample is pulled and suspended solids are run. Twice a week we also do BOD₅ grab samples which are used for remaining tasks as these are required that way.

Except for fecal coliforms being done once a week, all grab tests are performed daily. These are done in accordance with our permit scheduling. All tests are done in accordance with standard methods or alterations were approved by DEQ on our last annual inspection.

APPENDIX E

Industrial Waste Dischargers and Monitoring Program

Attached to and a part of this Agreement is a description of all industries discharging into the collection system and monitored under Ordinance number 13.04.450 (Appendix E).

For each facility, the following information is required.

- o Name of facility or industry
- o Mailing address and phone number
- o Contact person
- o Average flow of waste discharged daily
- o Average daily BOD₅ and suspended solids concentration
- o Monitoring program including sampling frequency and method and parameters monitored
- o Available information concerning any metals or toxic materials contained in the industrial effluent

NOTE: At the date of this contract, the City of Lebanon is not monitoring any of the industries contributing to the treatment plant influent flow under Ordinance No. 13.04.450.