



RESTATED AGREEMENT
for
OPERATIONS, MAINTENANCE AND
MANAGEMENT SERVICES
for the
CITY OF SWEET HOME, OREGON
WATER and WASTEWATER FACILITIES

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**RESTATED AGREEMENT FOR
OPERATIONS, MAINTENANCE AND MANAGEMENT SERVICES**

THIS RESTATED AGREEMENT (the "Agreement") is made effective this 8th day of Sept. 2015, by and between the City of Sweet Home, Oregon, (an Oregon Municipal Corporation) whose address for any formal notice is 1140 12th Avenue, Sweet Home, Oregon 97386 (hereinafter "Owner") and Operations Management International, Inc., whose address for any formal notice is 9191 South Jamaica Street, Englewood, CO 80112 (hereinafter "OMI"), who collectively shall be referred to as the "Parties."

WHEREAS, the Parties entered into an Agreement for Operations, Management and Maintenance services on December 2006 which has subsequently been amended between the commencement date of such agreement and June, 2015 by Amendments 1 through 9A;

WHEREAS, the Parties now wish to consolidate the terms of the agreement as it has been amended into this Restated Agreement; and

WHEREAS, the Parties wish to renew the prior agreement for an additional fifteen year term.

NOW THEREFORE, in consideration of the mutual agreements herein contained and subject to the terms and conditions herein stated, Owner and OMI hereto agree as follows:

1. SERVICES

- 1.1. OMI shall, within the design capacity and capability of the Owner's facilities, manage, operate and maintain the facilities so that the effluent discharged from the Project meets the requirements specified in Appendix C. The scope of services is defined in detail in Appendix B.
- 1.2. OMI shall, within the design capacity and capability of the Owner's facilities, manage, operate, and maintain the facilities so that finished water discharged from the Project meets the requirements specified in Appendix C. The scope of services is defined in detail in Appendix B.

2. STANDARD OF PERFORMANCE

OMI shall perform the services with the degree of skill and diligence normally employed by operations and maintenance personnel performing the same or similar services in a cost-effective and professional manner and in accordance with generally accepted practices.

3. OWNER'S RESPONSIBILITIES

- 3.1. All grounds, facilities, equipment, and vehicles now owned by Owner or acquired by Owner shall remain the property of Owner.
- 3.2. The Owner shall pay for all Capital Expenditures.
- 3.3. The Owner shall maintain and renew, with respect to all existing portions of the System, warranties, guarantees, easements, permits, authorizations and licenses that have been granted to the Owner, to the extent the maintenance thereof is not a responsibility of OMI hereunder.
- 3.4. The Owner shall pay all amounts associated with the occupancy or operation of the System and the performance of the Services including but not limited to all property, franchise, or other taxes associated with the project, except to the extent OMI shall be obligated to pay such amounts in accordance with the express terms of this Agreement.

- 3.5. The Owner shall provide OMI within a reasonable time after request any piece of Owner's heavy equipment that is available so that OMI may discharge its obligations under this Agreement in the most cost-effective manner. If such equipment is not available, then OMI is authorized to rent such equipment or retain the services of a qualified subcontractor to perform such obligations, and charge those expenses to the Repairs budget.
- 3.6. The Owner shall provide all licenses and insurance for Owner supplied vehicles used in connection with the project.
- 3.7. The Owner shall provide for OMI's use of all vehicles and equipment currently in use at the project, including the vehicles described in Appendix F.
- 3.8. The Owner agrees to not initiate offer(s) of employment or other compensation to Project Management and Supervisory personnel of OMI directly working on the Project for a period of two years (2) after the end date of this Agreement or said employee's re-assignment from the Project so long as they are gainfully employed by OMI. Owner reserves the right to respond to anyone seeking employment with the Owner.
- 3.9. Owner will provide to OMI all data in Owner's possession relating to the project. OMI will reasonably rely upon the accuracy and completeness of the information provided by the Owner.
- 3.10. The Owner shall designate an Owner's Representative who shall be empowered to act for Owner in accordance with the provisions of this Agreement, where such acts are not contrary to laws or ordinances.
- 3.11. The Owner shall maintain responsibility for operation and maintenance of the water distribution system and its water quality beginning at the discharge side of the finished water meters located at the water treatment plant, the wastewater treatment plant outfall line, and the entire sanitary and storm water collection systems.
- 3.12. The Owner shall provide for OMI's use all vehicles and equipment assigned to the Project. With prior approval of Owner, such vehicles and equipment may be used by OMI at other OMI projects within a 50-mile radius of the Project.

4. COMPENSATION AND PAYMENT

Compensation for the services is described in Appendix E.

5. TERM

- 5.1. The initial term of this Agreement shall be for sixteen years (16) years commencing on July 1, 2015 and ending June 30, 2031. Thereafter, this Agreement shall be automatically renewed for an additional term of five (5) years, or more, unless cancelled by either party not less than 120 days prior to expiration. Thereafter, this Agreement may be extended upon the mutual written agreement of the parties.
- 5.2. Either party may terminate this Agreement for a material breach of this Agreement by the other party after giving written notice of the breach and allowing the other party a reasonable time to correct the breach. Excepting breaches by Owner for non-payment of OMI's invoices, neither party shall terminate this agreement without giving the other party thirty (30) days' written notice of intent to terminate for failure of the other party to correct the breach within a reasonable time.

- 5.3. Owner may terminate this Agreement for convenience with at least six (6) months prior written notice of termination. In the event that Owner terminates the Agreement in accordance with the terms of this Section 5.3 PRIOR to June 30, 2021, Owner shall pay OMI a demobilization fee equal to five percent (5%) of the current Base Fee. Should termination occur AFTER June 30, 2021 but BEFORE June 30, 2026, Owner shall pay OMI a demobilization fee equal to three percent (3%) of the current Base Fee. Should termination occur AFTER June 30, 2026, Owner shall pay OMI a demobilization fee equal to two percent (2%) of the current Base Fee.
- 5.4. Upon notice of termination by Owner, OMI shall assist Owner in resuming operation of the Project. OMI will provide Owner at the date of termination, all Project records, logs, charts, graphs, and other documents maintained by OMI; however, OMI shall not transfer to Owner equipment, computer hardware and software that is owned, leased, or licensed to OMI, nor any of OMI's internal correspondence, personnel records, confidential financial reports and other proprietary documents. Furthermore, OMI shall provide Owner the quantities of chemicals listed herein. Owner shall pay OMI for the Cost of quantities in excess of the quantities listed. If additional Cost is incurred by OMI at the request of Owner, Owner shall pay OMI such Cost.

6. INDEMNITY AND LIABILITY

- 6.1. OMI hereby agrees to indemnify and hold Owner harmless from any claim, liability or damages for property damage or bodily injury, including death, which may arise from OMI's negligent operations under this Agreement, to the proportion such negligence contributed to the damages, injury, or loss, whether such negligent operation be by OMI or its employees or by subcontractor of OMI.
- 6.2. Owner agrees to indemnify and hold OMI harmless from any claim, liability or damages for property damage or bodily injury, including death, which may arise, except to the proportionate extent caused by the negligence or willful misconduct of OMI, its employees or its subcontractors.
- 6.3. It is understood and agreed that, in seeking the services of OMI under this Agreement, Owner is requesting OMI to undertake inherently unsafe obligations for Owner's benefit involving the presence or potential presence of hazardous substances. Therefore, Owner agrees to hold harmless, indemnify, and defend OMI from and against any and all claims, losses, damages, liability, and costs including, but not limited to, costs of defense arising out of or in any way connected with the presence, discharge, release, or escape of contaminants of any kind, excepting only such liability as may arise out of the negligence or willful misconduct of OMI, its employees or its subcontractors in the performance of services under this Agreement.
- 6.4. In no event shall OMI, its subcontractors or their officers or employees be liable for Owner's special, indirect or consequential damages, whether such liability arises in breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action.
- 6.5. OMI's responsibility is to operate the facilities in compliance with current laws and regulations, to the extent of their design and physical capacity. It is not part of OMI's scope to test for or eliminate water borne bacteria or viruses except as required by current laws and regulations.

7. INSURANCE AND BONDING

- 7.1. OMI shall provide the following insurances throughout the term of the Agreement, and shall provide to Owner Certificates of Insurance demonstrating compliance with this provision:
- 7.1.1. Statutory Worker's Compensation and Employers Liability Insurance as required by the State in which the project is performed.

- 7.1.2. Comprehensive Automobile and Vehicle Liability Insurance with One Million Dollars (\$1,000,000) combined single limits covering claims for injuries to members of the public and/or damages to property of others arising from the use of OMI owned or leased motor vehicles, including onsite and offsite operations.
 - 7.1.3. Commercial General Liability Insurance with limits of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate, covering claims for injuries to members of the public or damages to property of others arising out of any covered act or omission of OMI or any of its employees, or subcontractors.
 - 7.1.4. Upon request by Owner, OMI shall provide a Performance Bond in an amount equal to the annual Base Fee. Costs associated with the Performance Bond, if required, will be added to the annual Base Fee.
- 7.2. Owner will maintain the following insurances throughout the term of the Agreement, and shall provide OMI with Certificates of Insurance to demonstrate compliance with this provision:
- 7.2.1. Property Damage Insurance for all property including Owner supplied vehicles and equipment for the full fair market value of such property.
 - 7.2.2. Liability Insurance for all motor vehicles and equipment provided by Owner and operated by OMI under this Agreement.
- 7.3. Owner and OMI will provide for a waiver of subrogation against the other as to all insurances required to be carried hereunder, and each party waives any claim against the other arising in contract or in tort which are covered by their respective insurance hereunder.

8. LABOR DISPUTES

In the event activities by Owner's employee groups or unions causes disruption in OMI's ability to perform the project, Owner, with OMI's assistance, or OMI at its own option, may seek appropriate injunctive court orders during any such disruption, OMI shall operate the facilities on a best efforts basis until any such disruptions cease, but OMI cannot assure compliance with all contract conditions.

9. FORCE MAJEURE

- 9.1. Neither party shall be liable for damages, delays, or failure to perform its obligations under this Agreement if performance is made impractical, abnormally difficult, or abnormally costly, as a result of any unforeseen occurrence, including but not limited to fire, flood, strike, acts of God, or other occurrences, beyond its reasonable control. The party invoking this Force Majeure clause shall notify the other party immediately by verbal communication and in writing of the nature and extent of the contingency within ten (10) working days after its occurrence, and shall take reasonable measures to mitigate any impact of Force Majeure.
- 9.2. In the case of Force Majeure events (including Acts of God), Owners agrees to pay any costs and expenses (including all overtime charges and additional equipment charges) in order to maintain the Water Treatment Plant so that the finished water discharged from the facilities meets current permit specifications and the Wastewater Treatment Plant so that the effluent discharged from the facilities meets current permit specifications.

10. ACCESS TO FACILITIES AND PROPERTY

- 10.1. Owner will make its facilities accessible to OMI as required for OMI's performance of its services, and will secure access to any other Owner property necessary for performance of OMI's services.
- 10.2. OMI shall provide 24-hour per day access to Project for Owner's personnel. Visits may be made at any time by any of Owner's employees so designated by Owner's Representative. Keys for the Project shall be assigned to Owner by OMI. All visitors to the Project shall comply with OMI's operating and safety procedures.

11. CHANGES

Owner and OMI may mutually make changes within the general scope of services of this Agreement. The contract price and schedule will be equitably adjusted pursuant to a written Change Order, Modification or Amendment to the Agreement executed by both parties.

12. NO THIRD PARTY BENEFICIARIES

This Agreement gives no rights or benefits to anyone other than Owner and OMI and has no third party beneficiaries.

13. JURISDICTION

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

14. SEVERABILITY AND SURVIVAL

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

15. FINES AND CIVIL PENALTIES

OMI's responsibility for operations penalties for violation of the Mutual Agreement and Order #WQ/M-WR-98-221 and its Addenda (collectively, the "MAO"), a copy of which is attached hereto as Appendix H, shall be limited to those penalties outlined in paragraph 10.C of the MAO. OMI shall be liable for those fines or civil penalties which may be imposed by a regulatory agency for violations of the effluent quality requirements specified in Appendix B.1, that are a result of OMI's negligent operation. Owner will assist OMI to contest any such fines in administrative proceedings and/or in court prior to any payment by OMI. OMI shall pay the costs of contesting any such fines. Notwithstanding the foregoing, OMI shall not be liable for fines or civil penalties that result from violations that occurred prior to the Effective Date of this Agreement or for the effects of prior violations that have contributed to the assessment of any fine or civil penalty caused by OMI's negligent operations.

16. AUTHORITY

Both parties represent and warrant to the other party that the execution delivery and performance of this Agreement has been duly authorized by the responsible parties thereof. Both parties warrant that all required approvals have been obtained and the executing party below has such authority to bind the party.

17. RELATIONSHIP OF THE PARTIES

The relationship of OMI to Owner is that of independent contractor as provided in ORS 670.600 and OMI warrants that it meets the requirements of such subsection.

18. ASSIGNMENT

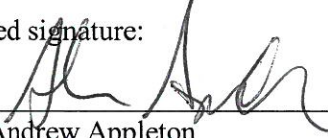
This Agreement shall be binding upon the successors and assigns of each of the parties, but neither party will assign this Agreement without the prior written consent of the other party. Consent shall not be unreasonably withheld.

19. ENTIRE AGREEMENT

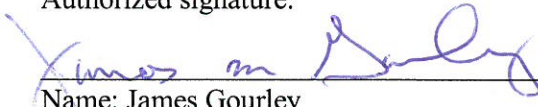
This Agreement, together with all Appendices attached to this Agreement, contains all representations and the entire understanding between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, or agreements, whether or not such correspondence, memoranda or agreements are in conflict with this Agreement, are intended to be replaced in total by this Agreement and its exhibits. The parties mutually declare there are no oral understandings or promises not contained in the Agreement which contains the complete, integrated, and final agreement between the parties.

**OPERATIONS MANAGEMENT
INTERNATIONAL, INC.**

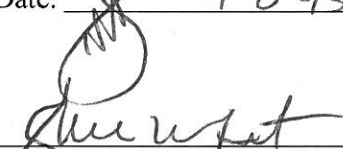
CITY OF SWEET HOME, OREGON

Authorized signature:


Name: Andrew Appleton
Title: Vice President
Date: 9/4/2015

Authorized signature:


Name: James Gourley
Title: Mayor
Date: 9-8-15



Name: Craig Martin
Title: City Manager
Date: 9-8-15

APPENDIX A - DEFINITIONS

- A.1. “Adequate Nutrients” means plant influent nitrogen, phosphorous, and iron contents proportional to BOD₅ in the ratio of five (5) parts nitrogen, one (1) part phosphorous, and one-half (0.5) part iron for each one hundred (100) parts BOD₅.
- A.2. “Base Fee” means the compensation paid by Owner to OMI for the base services defined in Appendix B of this Agreement for any year of the Agreement. The Base Fee is specified in Appendix E.1 and will be renegotiated annually. This compensation does not include payments for Requests by Owner that are incidental to or outside the Scope of Services.
- A.3. “Biologically Toxic Substances” means any substance or combination of substances contained in the plant influent in sufficiently high concentrations so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet the discharge requirements of Owner’s NPDES permit. Biologically toxic substances include but are not limited to heavy metals, phenols, cyanides, pesticides, and herbicides.
- A.4. “BOD” means Biochemical oxygen demand.
- A.5. “Capital Expenditures” means any expenditures for (1) the purchase of new equipment or facility items that cost more than Three Thousand Dollars (\$3,000.00); or (2) Major Repairs that significantly extend equipment or facility service life and cost more than Three Thousand Dollars (\$3,000.00); or (3) expenditures that are planned, non-routine, and budgeted by Owner.
- A.6. “Change in the Scope of Services” means those events or services which either change the basis of cost or add additional scope to the services provided in this Agreement which are anticipated as long term events (greater than one year). Such events or services include but are not limited to, services and/or cost presently the responsibility of Owner, newly mandated regulatory requirements, construction and the impacts thereof, and changes in the Project(s) characteristics.
- A.7. “Cost” means the total of all costs determined on an accrual basis in accordance with Generally Accepted Accounting Principles (GAAP), including but not limited to direct labor, labor overhead, chemicals, materials, supplies, utilities, equipment, maintenance, repair, and outside services.
- A.8. Electrical Costs means the monthly cost of 119,718 kWh of energy and 225 kW of demand calculated utilizing the Pacific Power Company’s Schedule 28 Rate Schedule, as amended from time to time, for the Water and Wastewater Plants plus Pacific Power Company’s Schedule 23, as amended from time to time, for the extra meter at Water Plant in effect on the last day of the month.
- A.9. “Incidental Services” means those services requested by Owner incidental to/or not specifically identified or included in OMI’s Costs, but are related or similar in nature to the services contemplated under this Agreement, including but not limited to, services and/or cost for plant or facility upgrades, rate studies, short term construction and the impacts thereof, engineering studies, and other short term incidental projects.
- A.10. “Major Repairs” means those repairs that significantly extend equipment or facility service life and cost more than Three Thousand Dollars (\$3,000.00).
- A.11. “Preventive Maintenance” means the cost of 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, sewer, vehicles, and facility.

- A.12. "Project" means all equipment, vehicles, grounds, and facilities described herein and where appropriate, the operations, maintenance, and management of such.
- A.13. "Repairs Cost" means the cost of those non-routine/non-repetitive activities required for operational continuity, safety, and performance generally resulting from failure or to avert a failure of the equipment, sewer, vehicle, or facility or some component thereof.
- A.14. "TSS" means total suspended solids.
- A.15. "Repair Limit" means the total repair expenditures that OMI has included as part of its annual fee. Such expenditures exclude any labor costs for OMI staff assigned to the project. However, OMI's specialized maintenance personnel not assigned to the project, who provide such specialized services, such as, but not limited to, vibration, thermographic, and electrical analysis, instrumentation repairs will be charged to the Repair Limit. The repair limit is subject to annual adjustment as agreed upon by Owner and OMI.

APPENDIX B - SCOPE OF SERVICES

OMI SHALL:

B.1. GENERAL

- B.1.1. Alter as needed, the process and/or facilities to achieve the objectives of this Agreement; provided, however, that no alteration shall be without Owner's written approval if alteration shall cost in excess of Three Thousand Dollars (\$3,000.00).
- B.1.2. Provide a Project Manager who shall be empowered to act for OMI in accordance with the provisions of this Agreement, and who shall attend Owner's staff and council meetings when requested. OMI shall permit Owner the right to review and approve the Project Manager whenever a change of persons in this position takes place.
- B.1.3. Provide staff for operation of the facilities, as required by permit(s), seven (7) days per week, including response to emergency calls 24 hours per day, 7 days per week, within one (1) hour of its occurrence. OMI shall designate, as a minimum, one staff member as standby to respond to such calls.
- B.1.4. Staff the Project with a sufficient number of qualified employees who possess the managerial, administrative, and technical skills to perform the services specified in this Agreement, and where appropriate, the certification requirements mandated by the State of Oregon. OMI will strive to cross-train and certify Project operators in both water and wastewater treatment.
- B.1.5. Pay all Cost incurred in normal Project operations.
- B.1.6. Maintain aesthetics of the facilities:
 - B.1.6.1. In general, maintain all facilities in a clean, neat, and orderly fashion
 - B.1.6.2. Administrative and other occupied spaces shall be kept clean, dry, and habitable
 - B.1.6.3. Other spaces and floors shall be free of sewage, screenings, sludge, debris, etc.
 - B.1.6.4. Equipment, tools, and material will be properly stored
 - B.1.6.5. Trees and shrubs shall be kept trimmed, grass shall be maintained, and other grounds shall be free of noxious weeds
- B.1.7. Place, at each permanently staffed project facility, a copy of OMI's Corporate Safety Program and provide all employees training specific to this Program, within forty-five (45) days from the effective date of this Agreement. The cost of any Capital Improvement required at the Project to bring the facilities within OSHA compliance at commencement of services will be paid by the Owner. Any changes in OSHA regulations requiring subsequent improvements to the facilities will be an out-of-scope event subject to compensation changes.
- B.1.8. OMI agrees to provide job related training for personnel in the areas including but not limited to operation, quality, maintenance, safety, supervisory skills, laboratory, and energy management. All such training shall be fully documented. Where employees are required

by law or regulation to hold current licenses, certificates or authority to perform the work required of their respective positions, OMI shall provide the training and agree with the employee to a reasonable time frame for the employee to qualify for such certificate, license or authority.

- B.1.9. OMI shall comply with all State and Federal Laws with regards to affirmative action provisions for minority hiring.
- B.1.10. Review the existing plant emergency action plan and provide an updated plan (if needed) not later than 90 Days.
- B.1.11. Develop a Capital Improvement List within 90 days of starting operations. This list will be updated annually and incorporated into a 5-year Capital Improvement Plan for the Owner.
- B.1.12. Maintain all manufacturer warranties on new equipment purchased by the Owner for the Project and assist the Owner in enforcing existing equipment warranties and guarantees as such relate to the Project.
- B.1.13. Provide and document all Repairs for the Project. Conduct a "repair vs replace" analysis for all Repairs for the Project. Where Repairs are less than 40 percent (40%) of replacement costs, the item will normally be repaired. Where Repair cost are more than 40 percent (40%) of replacement costs and the item qualifies as a Capital Expense, the analysis will be submitted to Owner for a decision concerning repair or replacement. The cost of Repairs shall not include the salary cost of OMI's personnel making such repair. However, due to the size, complexity, technical nature, or timing for completion of such Repairs, OMI may subcontract such Repairs and charge such services to the Repairs budget. Provide Owner with a detailed monthly report and accounting of all Repairs.
- B.1.14. Maintain aesthetics of the Project; in general, maintain all facilities in a clean, neat and orderly fashion; administrative and other occupied spaces shall be kept clean, dry and habitable; other spaces and floors shall be clean and free of sewage, screenings, sludge, and other debris; settled grit, grease, and floatable material shall be cleaned and removed from lift station wet wells at the plants; equipment, tools, and material will be properly stored; trees and shrubs shall be kept trimmed, grass shall be maintained at a height of less than six (6) inches, and other grounds shall be free of noxious weeds; buildings, structures, equipment and piping shall be maintained and painted to minimize deterioration and corrosion. Submerged metal components require special preparation and painting techniques, and are excepted from this provision
- B.1.15. Provide and maintain a mutually agreed upon public awareness program to demonstrate the Project's effectiveness. This includes, but is not limited to, the establishment of a telephone number and/or email address to which complaints and communications regarding the treatment facilities may be directed. All complaints and/or communications will be responded to in a reasonable time period.
- B.1.16. Maintain the following which shall be reviewed and updated periodically as necessary: (1) safety program, (2) emergency response plan, (3) plan of operations, (4) standard operating procedures, (5) unit process control procedures, (6) equipment repair/replacement recommendations, (7) equipment inventory of vehicles and other rolling stock, and (8) capital improvements recommendations, excluding those normally requiring engineering expertise.
- B.1.17. Pay all Costs incurred in normal Project operations.

B.1.18. Perform other services that are Incidental to the Scope of Services as directed by Owner.

B.2. WASTEWATER TREATMENT PLANT

- B.2.1. Within the design capacity and capability of the Wastewater Treatment Plant (Plant), manage, operate, and maintain the Plant so that effluent discharged from the Plant meets the requirements specified in NPDES permit No. 101657, unless one or more of the following occurs: (1) Plant influent does not contain Adequate Nutrients to support operation of the Plant's biological processes and/or contains Biologically Toxic Substances that cannot be removed by the existing processes and facilities; (2) dischargers into Owner's sewer system violate any or all regulations as stated in the applicable Sewer Ordinance; and/or (3) the flow, influent biochemical demand (BOD₅) and/or total suspended solids (TSS) exceeds the Plant's design parameters; in which case Appendix C, Section 1.2 specifies responsibilities and remedies.
- B.2.2. Comply with the terms of the MAO as it relates to meeting the interim permit limits at the Wastewater Treatment Plant. Upon request, OMI will assist the Owner with Reports and Actions required in the MAO and in accordance with E.1.7 of this Agreement.
- B.2.3. Operate the facilities in a manner such that odor and noise are minimized within the design capacity capabilities of the facilities. The cost for the future odor control and odor scrubbing devices to the facility will be treated as a Capital Improvement. The cost for any other upgrades or modifications to the facility above its capacity and specifications will also be treated as a Capital Improvement.
- B.2.4. Prepare and submit to Owner for transmittal to appropriate agencies, all regulatory reports pertaining to routine operation and maintenance of the facilities specified herein. OMI shall comply with all current local, State and Federal notice and reporting requirements, regarding violations, upsets, excursions, or emergencies related to the Wastewater Treatment facilities.
- B.2.5. Provide for the disposal of screenings, grit, scum, sludges, and biosolids to state approved landfill. Current disposal costs for sludge are One Hundred Ninety Eight Dollars and Seventeen Cents (\$198.17) per container plus Thirty Five Dollars (\$35.00) per ton of sludge. Any change in the cost of this service due to increased or unusual quantities of material, or increase in landfill rates, hauling costs, or tipping fees shall constitute a change of scope and give cause for an adjustment in fee. Owner and OMI agree that Owner is the generator of the screenings, grit, scum, sludges, and biosolids. OMI will continue to utilize Sweet Home Sanitation as the sludge hauler. At such time OMI determines it would be beneficial to alter this arrangement, the Owner will be notified.
- B.2.6. Where land application is used as the method for disposal of biosolids, OMI shall comply with the State and Federal 40 CFR 503 regulations applicable to such method. Specifically, OMI shall assist Owner in securing all permits and land use agreements, and perform soils and biosolids testing, and report the volume and quantity of biosolids land applied. OMI may use the existing Owner secured permits and land application sites.
- B.2.7. Provide computerized maintenance, process control and laboratory management systems for the Project. Owner shall have the right to inspect these records during normal business hours. The maintenance program will include documentation of spare parts inventory. This system shall be capable of providing historical data.

- B.2.8. Where applicable, monitor and report the volume and nature of septic tank hauler discharges.
- B.2.9. Perform all daily, weekly, monthly, quarterly and annual laboratory testing and sampling currently required by the NPDES permit. Additional laboratory testing and sampling requested by the Owner will be provided on a fee per test basis to be determined at the time of the request.
- B.2.10. Laboratory testing and sampling required by the NPDES permit on an infrequent or irregular basis, will be invoiced to the Owner as a pass-through.
- B.2.11. Provide and document all Preventive Maintenance for the Plant. Owner shall have the right to inspect these records during normal business hours.
- B.2.12. Provide and document repairs for the project. The Repairs Limit described in Appendix E shall not include the salary cost of OMI's onsite personnel assigned to the project making such repair. However, due to the size, complexity, technical nature, or timing for completion of such repairs, OMI may subcontract or provide OMI personnel outside of the project to make such repairs and charge such services to the Repairs budget. OMI will provide Owner with a monthly report on the expenditures of Repairs.

B.3. WATER TREATMENT PLANT

- B.3.1. Within the design capacity and capability of the Water Treatment Plant (Plant), manage, operate, and maintain the Plant so that finished water discharged from the Project meets the requirements specified by the State of Oregon and U.S. EPA for Public Water Systems and National Primary Water Treatment Regulations as outlined in Appendix C. OMI shall be responsible for meeting potable water quality limitations established therein unless the raw water supply contains Toxic Materials.
- B.3.2. Provide for the disposal of sludges to existing permitted disposal sites. Any change in the Cost of this service due to permitting requirements, increased or unusual quantities of material, or increases in landfill rates, hauling costs, or tipping fees shall constitute a change in scope and give cause for an adjustment in fee. Owner and OMI agree that Owner is the Generator of the residuals.
- B.3.3. Perform all daily, weekly, monthly, quarterly and annual laboratory testing and sampling currently required by the State and Federal Safe Drinking Water Regulations for the Existing Water Facility. In addition OMI will collect monthly and quarterly distribution samples for bacteria and disinfection bi-products. OMI is responsible for the costs for analyzing said samples. Owner is responsible for any re-sampling that may occur in the event of a positive bacteria count including but not limited to additional manpower associated with additional sampling. Owner is responsible for all costs associated with sampling required by the State and Federal Safe Drinking Water Regulations for the New Water Facility including but not limited to additional manpower associated with that sampling.
- B.3.4. Laboratory testing and sampling required by the State and Federal Drinking Water Regulation on an infrequent or irregular basis will be invoiced to the Owner as a pass-through.

- B.3.5. Provide and document all Preventive Maintenance for the Plant. Owner shall have the right to inspect these records during normal business hours.
- B.3.6. Provide and document repairs for the project. The Repairs Limit described in Appendix E shall not include the salary cost of OMI's onsite personnel assigned to the project making such repair. However, due to the size, complexity, technical nature, or timing for completion of such repairs, OMI may subcontract or provide OMI personnel outside of the project to make such repairs and charge such services to the Repairs budget. OMI will provide Owner with a monthly report on the expenditures of Repairs.
- B.3.7. OMI will collect and analyze two weekend distribution samples for free chlorine residual in the distribution system as requested by the Department of Human Services, Drinking Water Division.
- B.3.8. Cleaning of backwash ponds will be conducted by OMI personnel using city provided equipment to designated location within 300 feet of backwash ponds. Owner shall be responsible for all materials and the site at which the material is stored.
- B.3.9. Source water to facility is provided by an inlet structure located at Foster Dam. This structure includes a compressor building located at 53rd Avenue, which services this inlet. OMI will maintain daily operation of this facility and endure all costs associated.

APPENDIX C - CAPACITY AND CHARACTERISTICS

C.1. CAPACITY AND CHARACTERISTICS OF WASTEWATER TREATMENT PLANT

C.1.1. Wastewater Treatment Plant Design Capacity is described as follows:

<u>Parameter</u>	<u>Plant No. 1</u>
Flow, million gals/day	2.0 MGD
BOD ₅ , pounds per day	1,080
TSS, pounds per day	3,020
Daily Peaking Factor	6.4

All parameters shall be based on the design average dry weather flow with the Daily Peaking Factor being the multiplier applied to the design average dry weather flow.

C.1.2. In the event any one of the Project influent characteristics, suspended solids, BOD₅, or flow, exceeds the design parameters stated above, OMI shall return the plant effluent to the characteristics required by the NPDES permit in accordance with the following schedule after Project influent characteristics return to within design parameters.

<u>Characteristics Exceeding Design Parameters By</u>	<u>Recovery Period Maximum</u>
10% or Less	5 days
Above 10% Less than 20%	10 days
20% and Above	30 days

Notwithstanding the above schedule, if the failure to meet effluent quality limitations is caused by the presence of Biologically Toxic Substances or the lack of Adequate Nutrients in the influent, then OMI will have a thirty (30) day recovery period after the influent is free from said substances or contains Adequate Nutrients.

C.1.3. OMI shall not be responsible for fines or legal action as a result of discharge violations within the period that influent exceeds design parameters, does not contain Adequate Nutrients, contains Biologically Toxic Substances, and the subsequent recovery period.

C.1.4. The Flow, million gals/day	1,917
BOD ₅ pounds/day	2,105
TSS Pounds/day	3,890

The estimated costs for services under this specification is based on the above 2011 Annual Averages.

C.2. RAW WATER QUALITY AND FINISHED WATER REQUIREMENTS OF WATER TREATMENT PLANT

C.2.1. The facilities shall be operated and maintained in accordance with all applicable federal, state and local regulations pertaining to water treatment, contaminant monitoring, and reporting. All analytical methods used to demonstrate compliance shall be in accordance with methods approved by the Owner and State Agencies, as applicable. In the event that a parameter does not have a method approved by State Agencies, methods approved by EPA as of the date hereof, as contained in the Disinfectants and Disinfection Byproducts Rule (as promulgated in the Federal Register on December 16, 1998), shall be used.

C.2.2. System Demand

OMI shall assume an average demand for water of 1.096 mgd and a peak daily demand of 2.304, at the commencement of this agreement. OMI acknowledges that the Owner has the right to demand up to 2.304 mgd on any day and OMI shall undertake, as and when needed, the necessary arrangements to assure that sufficient personnel are available to satisfy additional demand overtime. Any change of five percent (5%) or more in the average demand for water as listed above, based on a twelve (12) month moving average, will constitute a change in scope, and an appropriate adjustment of fee shall be negotiated.

C.2.3. OMI shall be responsible for meeting the water treatment performance standards established in Appendix B and C, but shall not be responsible for events outside the control of OMI, which include but are not limited to:

C.2.3.1. Toxic materials contained in the raw water supply

C.2.3.2. Raw water supply is insufficient to meet demand

C.2.3.3. The demand for water exceeds the design capacity of the facilities specified in Appendix C

C.2.3.4. Vandalism

C.2.3.5. Acts of God or Force Majeure events

C.2.4. The estimated cost for services under this Agreement is based on an average production of 1.096mgd. Any change of five percent (5%) in the average daily production based upon a twelve (12) month moving average will constitute a change in scope of services.

APPENDIX D—LOCATION OF PROJECT WASTEWATER TREATMENT PLANT

OMI agrees to provide the services necessary for the operation, maintenance, and management of the facilities described herein:

- D.1. All equipment, grounds, and facilities now existing within the current property boundaries of or being used to operate Owner's Wastewater Treatment Plant(s) located at:

1357 Pleasant Valley Rd, Sweet Home, Oregon

- D.2. All equipment, grounds and facilities now existing within the current property boundaries of or being used to operate Owner's Water Treatment Plant located at:

1500 47th Avenue, Sweet Home, Oregon

APPENDIX E - COMPENSATION, PAYMENT AND BASE FEE ADJUSTMENT FORMULA

E.1. COMPENSATION

- E.1.1. Owner shall pay to OMI as compensation for services performed under this Agreement, a Base Fee of Nine Hundred Seventy Five Thousand Nine Hundred Fifty Dollars (\$975,950) for the 2015-2016 contract year. .
- E.1.2. Subsequent years' Base Fees shall be determined as follows: Owner shall pay to OMI as compensation for services performed for subsequent years of this Agreement the prior year's Base Fee plus an increase of up to three percent (3%) of that Base Fee. Any change of Scope related to additional services, or any individual uncontrollable outside cost increases (power, chemicals, solids disposal fee, Repairs) or benefit costs in excess of three percent (3%) or items related to Appendix A.6., will be added at anticipated cost upon mutual agreement and/or negotiation between Owner and OMI. Changes in the Base Fee shall be negotiated annually, four (4) months prior to anniversary of the effective date hereof. Upon each contract year renegotiation, OMI shall continue to invoice Owner at the previous amount until the new contract year price is agreed upon. Upon written notice agreement between the parties as to the new contract year base fee, OMI shall issue an invoice retroactively adjusting the previous base fee amount.
- E.1.3. Base Fee will be adjusted as a result of electrical rate increases or decreases that occur during any Agreement year. If the electrical fee increases or decreases during a contract year, an adjustment will be made upon year-end reconciliation. Compensation will be based upon kilowatt usage in Article A.8.
- E.1.4. The total amount OMI shall be required to pay for Repairs Cost shall not exceed the annual Repairs Limit of Thirty Thousand Dollars (\$30,000), as more specifically set below during the period set forth in E.1.1. Upon exceeding the annual Repairs Limit, OMI shall provide Owner with a monthly invoice of Repairs cost over the annual Repairs Limit, and Owner shall pay OMI for all Repairs Cost in excess of such limit. OMI will rebate to Owner the entire amount that actual Repair Cost are less than the annual Repairs Limit in any year of this Agreement.
- E.1.4.1 The total amount OMI shall be required to pay for Repairs at the wastewater facilities specified herein shall not exceed the annual Repairs limit of Fifteen Thousand Dollars (\$15,000) during any one contract year of this Agreement.
- E.1.4.2 The total amount OMI shall be required to pay for Repairs at the water facilities specified herein shall not exceed the annual Repairs limit of Fifteen Thousand Dollars (\$15,000) during any one Contract Year of this Agreement
- E.1.5. The Repairs Limit shall be negotiated each year, three (3) months prior to anniversary of the effective date hereof in accordance with Appendix E.1.2 above.
- E.1.6. Requests by Owner that are incidental to the Scope of Services shall be invoiced to Owner at OMI's Cost plus an agreed upon markup.
- E.1.7. In the event that a change in the scope of services provided by OMI occurs, Owner and OMI will negotiate a commensurate adjustment in Base Fee.

E.2. PAYMENT OF COMPENSATION

- E.2.1. One-twelfth (1/12) of the Base Fee for the current year shall be due and payable on the first of the month for each month that services are provided.
- E.2.2. All other compensation to OMI is due on receipt of OMI's invoice and payable within fifteen (15) business days.
- E.2.3. Any monies due to Owner due to rebate reconciliations will be paid within sixty (60) days after the end of each Agreement year.
- E.2.4. Owner shall pay interest at an annual rate equal to Wells Fargo Bank, N.A.'s prime rate plus one and one-half percent (1-1/2%) (said amount of interest not to exceed any limitation provided by law) on payments not paid and received within fifteen (15) business days, such interest being calculated from the due date of the payment.

APPENDIX F - PROJECT VEHICLES AND EQUIPMENT

The Project includes all vehicles, rolling stock, and other equipment as follows:

Year	Make	Model/Description	Equipment/Vehicle ID No.
1981	John Deere	410-D Backhoe	410-D 25410310T
2003	Ford Ranger	2WD Pickup	1FTYR10UX4PA35711
1998	Ford	Expedition	1FMRU18W6WLB89699

APPENDIX G - 30-DAY CHEMICAL INVENTORY

	Chemical	Wastewater Plant	Units
Chlorine			
Sulfur Dioxide			
Polymer			
Lime			

	Chemical	Water Plant	Units
Chlorine			
Fluoride			
ACH			
Soda Ash			
Filter Aid			

APPENDIX H - MUTUAL AGREEMENT AND ORDER NO. WQ/M-WR-98-221 ADDENDUMS

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**APPENDIX I - DEPARTMENT OF HUMAN SERVICE NOTICE OF VIOLATION AND
REMEDIAL ORDER**

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