

FULLY EXECUTED**HERD TECHNICAL CONSULTATION AGREEMENT**

CONTRACT NUMBER

97-T1547

AM. NO.

PCA NUMBER

12185

PROJECT NUMBER

900129-00

THIS AGREEMENT, made and entered into this 1st day of June, 1998,
in the State of California, by and between State of California, through its duly elected or appointed, qualified and acting

TITLE OF OFFICER ACTING FOR STATE

Chief

Business Services

AGENCY

Department of Toxic

Substances Control

, hereafter called the State, and

APPLICANT'S NAME

City of Redlands Municipal Utilities Department

, hereafter called the Applicant.

This Agreement is entered into by and between the State of California, Department of Toxic Substances Control ("DTSC") and City of Redlands Municipal Utilities Department ("Applicant"). This Agreement applies to the City of Redlands Septage Disposal Ponds ("Site"), located at C.L. Pharris Sand and Gravel Incorporated (dba Sunwest Materials), Alabama Street, Redlands.

This Agreement sets forth the provisions by which DTSC will provide risk assessment consultative services on a cost reimbursement basis. This Agreement is for services that will be performed by DTSC pursuant to Health and Safety Code Section 25201.9. The Applicant shall comply with all applicable laws and regulations including local, State and federal requirements, in executing its duties under this Agreement.

CONTINUED ON 5 SHEETS, EACH BEARING NAME OF APPLICANT AND CONTRACT NUMBER.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto, upon the date first above written.

STATE OF CALIFORNIA**APPLICANT**

AGENCY

Department of Toxic Substances Control

BY (AUTHORIZED SIGNATURE)



PRINTED NAME OF PERSON SIGNING

Marvin H. Philo

TITLE

Chief, Business Services

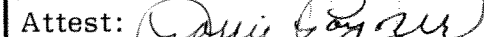
City of Redlands Municipal Utilities Department

BY (AUTHORIZED SIGNATURE)



William E. Cunningham, Mayor

PRINTED NAME AND TITLE OF PERSON SIGNING

Attest: 

Lorrie Poyzer, City Clerk

ADDRESS

35 Cajon, Suite 15A, P.O. Box 3005

Redlands, CA 92373

DEPARTMENT OF GENERAL SERVICES
USE ONLY

DEPARTMENT OF
TOXIC SUBSTANCES CONTROL
APPROVED

DEC 14 1998

EXEMPT FROM THE
DEPARTMENT OF GENERAL
SERVICES REVIEW PER
SAM 1215, 2, a.

TOTAL AMOUNT

\$13,220.00

SIGNATURE OF ACCOUNTING OFFICER



DATE

12/7/98

- I. In consideration of performance of Applicant's obligations herein, DTSC shall provide professional guidance, consultation, and staff to assist in risk assessment review and consultative services in accordance with the Scope of Work, Exhibit A, which is attached hereto and incorporated herein by this reference, for the City of Redlands Septage Disposal Ponds (Site), which consists of five septage ponds which are located north of the Santa Ana River and approximately 600 feet east of Alabama Street. The ponds were reportedly used from around the 1920s to 1985 for disposal of domestic waste from septic tanks.

The Santa Ana Regional Water Quality Control Board (SARWQCB) is the lead agency and will perform oversight for the Applicant's site remediation project, including site characterization; DTSC will provide risk assessment consultation to the Applicant and the SARWQCB for Applicant's site remediation project.

Any time frames specified in this Agreement or otherwise discussed by the parties are goals which DTSC will endeavor in utmost good faith and use best efforts to achieve, however, failure to meet such time frames will not subject DTSC to any liability for damages that may be suffered by the Applicant.

- II. The term of this Agreement shall be from June 1, 1998 to June 30, 1999 unless modified in writing by mutual agreement of the parties.
- III. Applicant agrees to reimburse DTSC for its actual cost of performing the consultative services, based on an hourly rate including consultation by DTSC with Applicant and SARWQCB, and DTSC review of the reports and provision of comments thereon pursuant to this Agreement. An estimate of the DTSC's costs is attached as Exhibit B. The estimate includes all direct operating expenses, labor, travel, administrative costs, and laboratory analysis and related costs. It is understood by the parties the estimate is precisely that, and cannot be relied upon as the final figure and DTSC's costs may exceed or be less than the estimate. Nevertheless, DTSC shall not expend money under this Agreement in excess of the estimate in Exhibit B without securing a written modification of this Agreement from the Applicant.

In anticipation of services to be rendered, Applicant shall make an advance payment to DTSC of \$13,220.00. That payment shall be made no later than 15 days after this Agreement is fully executed. If Applicant's advance payment does not cover all costs payable to the DTSC in accordance with this Agreement, Applicant agrees to pay the additional costs 30 days after receipt of an invoice with backup documentation to include description of work completed, number of hours and hourly rates, from the DTSC. Out of the advance, Applicant agrees to pay DTSC a minimum fee of \$1,000.00 regardless of the amount of work or services performed by DTSC under the terms of the contract. If the Applicant decides to cancel the contract before the amount of work

performed by DTSC equals \$1,000.00, the Applicant agrees to pay the sum of \$1,000.00 as a fee. If the cost of work performed by DTSC exceeds \$1,000.00 but is less than the advance payment (\$13,220.00), the Applicant will only be billed for services performed or costs incurred or obligated for by DTSC up to the date notice of cancellation is received by DTSC without any additional fee. The advance payment shall be held until such time as all other costs have been reimbursed. The remaining charges shall then be charged against the advance.

Applicant agrees to reimburse DTSC for the costs of services provided by DTSC which are in excess of the advance payment. DTSC agrees to remit to Applicant any unexpended money in the final balance of the Applicant's account within 120 days following project completion or termination of this Agreement. DTSC agrees to provide quarterly expenditure reports to the Applicant. Any dispute regarding the final balance or its calculation shall be subject to the dispute resolution process set forth in Section IV below.

The hourly rates utilized in the development of the cost estimates set forth in Exhibit B reflect the Department's current hourly rates. These rates will be updated as needed to allow the Department to be reimbursed for actual direct costs. The Department's indirect rate will be adjusted every six months to allow the Department to recoup its actual costs. The Applicant is responsible for any increases in the hourly or indirect rates and agrees to reimburse the Department for these cost increases.

IV. Dispute Resolution Process

If applicant objects to any DTSC recommendation resulting from implementation of the terms of this Agreement, DTSC and Applicant shall first attempt informally and in good faith to resolve the dispute. If Applicant and DTSC fail to informally resolve the dispute, Applicant shall notify DTSC in writing of the objection. DTSC shall provide a written explanation of its position to Applicant within 45 days of Applicant's notification of objection to DTSC.

If Applicant disagrees with DTSC's written position statement regarding the dispute, Applicant may submit a petition to the Science Advisor within thirty (30) days of Applicant's receipt of DTSC's final position. Applicant's petition shall set forth the basis of the dispute. The Science Advisor shall receive written evidence and testimony concerning DTSC's position and Applicant's objection thereto, and shall decide whether DTSC's position is appropriate under all the facts and circumstances within 30 days of submission of Applicant's petition unless DTSC informs the Applicant in writing otherwise. The Science Advisor shall issue a written decision to the Applicant and SARWQCB affirming DTSC's position, setting aside the DTSC's position, or amending the DTSC's position, as appropriate. It is recognized that the SARWQCB has

regulatory jurisdiction for the Site, and in the event of a dispute, the Science Advisor will endeavor to achieve consensus among the Applicant, DTSC and SARWQCB.

During the pendency of all dispute resolution procedures, the time periods for completion of work to be performed under this Agreement which are affected by the dispute shall be extended for a period of time not to exceed the actual time taken to resolve the dispute.

The Dispute Resolution Process only applies to any dispute relating to the cost reimbursement issues and does not apply to any determinations made by DTSC that are necessary to protect human health and the environment in carrying out the terms and conditions set out in this contract. Such determinations are not subject to the Dispute Resolution Process under this Agreement.

- V. Applicant shall submit the advance payment \$13,220.00 and subsequent payments required pursuant to paragraph III, above, to:

Department of Toxic Substances Control
Accounting
Attention: Ms. Karen Poon
400 P Street, Fourth Floor
P.O. Box 806
Sacramento, California 95812-0806

The total amount payable to DTSC may not exceed the estimated amount of \$13,220.00, except pursuant to paragraph III, above.

Copies of checks and letters transmitting such checks shall be sent simultaneously to DTSC's Project Coordinator.

- VI. Applicant agrees to take all reasonable precautions to protect DTSC employees who are on Applicant's property for the purpose of performing work required by this Agreement so that DTSC employees are not exposed to unreasonable risks.
- VII. Except as expressly provided in Health and Safety Code Section 25201.9, nothing in this Agreement is intended to limit or restrict the authority of DTSC to take actions against the applicant for violations identified by DTSC employees while engaged in onsite visits or inspections conducted pursuant to this Agreement.
- VIII. This Agreement may be terminated without cause by DTSC or Applicant upon thirty (30) days written notice sent to the other party. DTSC shall not be liable for any damages suffered by the Applicant as a result of the termination of this Agreement.

- IX. This Agreement shall be subject to the approval of the Department of General Services, unless otherwise exempted.
- X. DTSC's Project Coordinator, address and telephone number for notice is as follows unless DTSC otherwise notifies the Applicant in writing:

Stephen M. DiZio, Ph.D.
Science, Pollution Prevention and Technology Program
Human and Ecological Risk Division
400 P Street, 4th Floor
P.O. Box 806
Sacramento, CA 95812-0806
Telephone: (916) 327-2517

- XI. The Applicant's Project Manager, address and telephone number for notice is as follows unless the Applicant notifies DTSC otherwise in writing:

Michael L. Huffstutlev
Chief of Water Resources & Utilities Operations
City of Redlands
35 Cajon, Suite 15A
P.O. Box 3005
Redlands, CA 92373
Telephone: (909) 782-4904

EXHIBIT A

SCOPE OF WORK

1.1 Jurisdiction. This Agreement is entered into by the Department of Toxic Substances Control (DTSC) and the Applicant pursuant to Health and Safety Section 25201.9. The Santa Ana Regional Water Quality Control Board (SARWQCB) is the lead agency for this project and the DTSC will provide expertise regarding risk assessment.

1.2 Purpose. In entering into this Agreement, it is the objective of the parties that DTSC review the "Phase I Environmental Site Assessment", the "Feasibility of Closure Alternatives," and the "Human Health and Groundwater Impact Risk Analysis Results for the Alabama Street Lease Project Site" and, as requested by the SARWQCB, make a recommendation as to acceptability of the calculated risk levels. The SARWQCB letter dated March 18, 1998 is attached as reference. The purpose of this agreement is also to obtain reimbursement from the Applicant for DTSC's review and consultation costs.

2.0 BACKGROUND

2.1 Ownership. The Alabama Street Lease Project Site is located at 8203 Alabama Street in the City of Redlands, California.

2.2 Site Background. The site consists of five seepage ponds which are located north of the Santa Ana River and approximately 600 feet East of Alabama Street. The ponds were reportedly used from around the 1920s to 1985 for disposal of domestic waste from septic tanks. This investigation has been conducted to evaluate potential contamination associated with the operation of the former seepage ponds.

2.3 Substances Found at the Site. Soluble lead and Total Petroleum Hydrocarbons have been detected in earlier, 1994-95, investigations of site soil and sludge samples. Cadmium, lead, manganese, and selenium have been detected in samples collected from on-site groundwater monitoring wells. Additional chemicals may be identified as chemicals of potential concern during review of the site characterization.

3.0 SCOPE OF WORK. It is hereby agreed that Applicant and DTSC shall conduct the following response activities in the manner specified herein, and in accordance with a mutually agreed upon schedule, as follows:

3.0.1. Consultation with SARWQCB Project Manager. The DTSC Staff Toxicologist shall meet with the SARWQCB Project Manager to review site history, sampling data and site-specific geographic and demographic considerations.

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3.0.2. Consultation with Applicant. The DTSC Staff Toxicologist shall meet with the Applicant to review site characterization, health risk, or other reports and to discuss specifics related to the risk assessment documents and, if necessary, the ecological screening evaluations.

3.1 Human Health Risk Assessment. The DTSC shall review and the Human Health and Groundwater Impact Risk Analysis and provide SARWQCB and Applicant with written as agreed upon by DTSC with the Applicant and SARWQCB. The comments may be of any form and length determined appropriate by the DTSC. The DTSC, SARWQCB, and Applicant may hold conference calls or meetings to discuss site-related matters, including DTSC comments or recommendations.

3.2 Phase I Environmental Site Assessment The DTSC shall review the Phase I Environmental Site Assessment and provide SARWQCB and Applicant with written as agreed upon by DTSC with the Applicant and SARWQCB. The comments may be of any form and length determined appropriate by the DTSC.

3.3 Feasibility Study of Site Closure Activities The DTSC shall review Feasibility Study of Site Closure Activities and provide SARWQCB and Applicant with written as agreed upon by DTSC with the Applicant and SARWQCB. The comments may be of any form and length determined appropriate by the DTSC.

3.4 Response to Comments The DTSC shall review any written responses to those DTSC comments documented above on the Human Health Risk Assessment, the Phase I Environmental Site Assessment, Feasibility Study of Site Closure Activities and provide responses if requested by the SARWQCB. The comments may be of any form and length determined appropriate by the DTSC. After review, DTSC will issue as final any written comments on the Human Health Risk Assessment, the Phase I Environmental Site Assessment, Feasibility Study of Site Closure Activities.

3.5 Record Retention. The DTSC shall retain all cost records associated with the work performed under this Agreement for a period of not less than six years. During normal business hours, the DTSC shall have all documents which support the DTSC's cost determination available for inspection upon request. The availability of records and documents shall be in accordance with the rules of the Public Records Act.

3.6 Communications. Any of the DTSC's review comments and recommendations made regarding documents and communications will be communicated to Applicant in writing by the Science Advisor to the Director, Department of Toxic Substances Control or his/her designee. No informal advice, guidance, suggestions or comments by the DTSC regarding reports, plans, specifications, schedules or any other writings by the DTSC shall be construed to relieve Applicant of the obligation to obtain such formal approvals as may be required.

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3.7 Site Access. The DTSC shall be allowed access to the Site upon consultation with the Applicant described in this Agreement if the DTSC determines that access is necessary to facilitate review of the risk assessment or to protect public health and safety or the environment.

3.8 Sampling, Data, and Document Availability. When requested by the DTSC, Applicant shall make available to the DTSC, and shall provide copies of, all technical documents, environmental data and related information concerning contamination at the Site, and pertinent documents pertaining to on-site and off-site transfer or transportation and/or disposal of contaminated and suspect contaminated materials (excluding confidential business information), which may include, but is not necessarily limited to, technical records, documents prepared by environmental contractors, sampling and monitoring information, and photographs and maps, whether or not such data and information were developed pursuant to this Agreement. Availability of records and documents shall be in accordance with the Public Records Act, which includes provision for Confidential Business Information.

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EXHIBIT B

**CITY of REDLANDS, CALIFORNIA
ALABAMA STREET LEASE PROJECT SITE
ESTIMATED COSTS AND HOURS**

DESCRIPTION	STAFF	HOURS	RATE	SUBTOTAL
(3.0.1 and 3.0.2) Consultation with SARWQCB and Applicant	Staff Toxicologist	8	\$110	\$ 880
(3.0.1 and 3.0.2) Consultation with SARWQCB and Applicant	Senior Toxicologist	4	\$115	460
(3.1) Review Human Health and Groundwater Impact Risk Analysis Results and draft memo	Staff Toxicologist	24	\$110	2,640
(3.2) Review Phase I Site Assessment and draft memo	Staff Toxicologist	24	\$110	2,640
(3.3) Review Feasibility of Site Closure Activities and draft memo	Staff Toxicologist	16	\$110	1,760
(3.4) Response to comments	Staff Toxicologist	21	\$110	2,310
(3.4) Response to comments	Senior Toxicologist	2	\$115	230
Meeting with the SARWQCB and City of Redlands	Staff Toxicologist	10	\$110	1,100
Contract Administration	Assoc. Gov. Program Analyst	12	\$75	900
Travel, per diem	Staff Toxicologist			300
TOTAL				\$ 13,220

City of Redlands



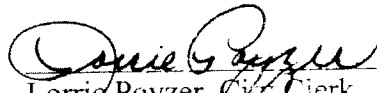
STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)SS
CITY OF REDLANDS)

I, Lorrie Poyzer, City Clerk of the City of Redlands, California, do hereby certify under penalty of perjury that the following is a true and correct excerpt from the minutes of the City Council meeting held on November 3, 1998:

"Agreement - Environmental Investigation Services - On motion of Councilmember Gilbreath, seconded by Councilmember Freedman, the City Council unanimously authorized a technical consultation agreement with the State of California, Department of Toxic Substances Control (CDTSC) in the amount of \$13,220.00 to provide environmental investigation services for the Alabama Lease site Project and authorized the Mayor and City Clerk to sign the agreement on behalf of the City."

The undersigned further certifies that the above action has not been repealed or amended and remains in full force and effect.

WITNESS my hand and the official seal of the City of Redlands, California, this 2nd day of December, 1998.


Lorrie Poyzer, City Clerk
City of Redlands, California