

DEPARTMENT OF HEALTH SERVICES

714/744 P STREET
P.O. BOX 942732
SACRAMENTO, CA 94234-7320



(916) 323-3423

SEP 26 1990

Gary Phelps
City of Redlands
Municipal Utilities Department
2 East Citrus, Suite 203
Redlands, CA 92373

Dear Mr. Phelps:

CONTRACT NO. 90-T0042

The enclosed contract has been approved by the State and
should be retained as your record of this agreement.

For program matters and for submission of invoices, please
contact:

Chief, Contracts and Grants Administration
Toxic Substances Control Program
Department of Health Services
714/744 P Street
P. O. Box 942732
Sacramento, CA 94234-7320
Telephone (916) 324-3751

Sincerely,

for Katherine Raptis
Contract Technician
Office of Procurements and Contracts
Toxic Substances Control Program

Enclosure



STANDARD AGREEMENT

APPROVED BY THE
ATTORNEY GENERAL

S.D. 2 (REV. 4-90)

CONTRACT NUMBER 90-T0042	AM. NO.
CONTRACTOR'S FEDERAL I.D. NUMBER 95-6000766	

THIS AGREEMENT, made and entered into this 24th day of September, 1990,
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, Office of Procurements & contracts

AGENCY

Department of Health Services

CONTRACTOR'S NAME

City of Redlands Municipal Utilities Department

, hereafter called the State, and

, hereafter called the Contractor.

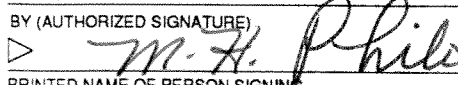
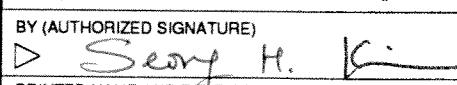
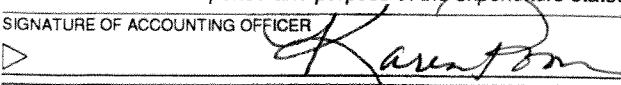
WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the State hereinafter expressed, does hereby agree to furnish to the State services and materials as follows: (Set forth service to be rendered by Contractor, amount to be paid Contractor, time for performance or completion, and attach plans and specifications, if any.)

- The Contractor shall furnish all materials, tools, equipment and incidentals necessary to design, construct, and install a Granular Activated Carbon (GAC) treatment facility to remove TCE and DBCP from domestic drinking water supply wells 30A, 31A, and 32 owned and operated by the City of Redlands. These City owned wells are located within the Crafton-Redlands Hazardous Substances Release Site, and the treatment of water from the wells will provide aquifer protection of downgradient supplies as specified in Article 2, "Statement of Work".

CONTINUED ON 6 SHEETS, EACH BEARING NAME OF CONTRACTOR AND CONTRACT NUMBER.

The provisions on the reverse side hereof constitute a part of this agreement.

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

STATE OF CALIFORNIA		CONTRACTOR	
AGENCY Department of Health Services		CONTRACTOR (If other than an individual, state whether a corporation, partnership, etc.) City of Redlands Municipal Utilities Department	
BY (AUTHORIZED SIGNATURE) 		BY (AUTHORIZED SIGNATURE) 	
PRINTED NAME OF PERSON SIGNING Marvin H. Philo		PRINTED NAME AND TITLE OF PERSON SIGNING Seong (Sam) H. Kim, Director	
TITLE Chief, Office of Procurements & Contracts		ADDRESS P.O. Box 3005 Redlands, CA 92373	
AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 1,976,900	PROGRAM/CATEGORY (CODE AND TITLE) (OPTIONAL USE) Remedial Design/Remedial Action	FUND TITLE HSCF	Department of General Services Use Only Exempt from Dept. of General Services approval per Health and Safety Code Sections 25358.3 and 25358.5
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT \$ 0	ITEM 4260-519-710 (a)	CHAPTER 1439	
TOTAL AMOUNT ENCUMBERED TO DATE \$ 1,976,900	OBJECT OF EXPENDITURE (CODE AND TITLE) 7115-403-11060-400042-00	STATUTE 1985	
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.		FISCAL YEAR 44	
SIGNATURE OF ACCOUNTING OFFICER 		T.B.A. NO.	B.R. NO.
		DATE 9/24/90	

SEP 26 1990

☐ CONTRACTOR☐ STATE AGENCY☐ DEPT. OF GEN. SER.☐ CONTRACTOR☐

2. The following Articles are attached and made part of this contract by reference:

Article 1, "General Terms and Conditions"
Article 2, "Statement of Work"
Article 3, "Summary of Tasks/Budget"
Article 4, "Map of the Site and the GAC Treatment Facility"

3. This Contract shall not exceed \$1,976,900. Payment will be made to Contractor in increments upon satisfactory completion of deliverables and compliance with all of the requirements set forth in this contract including those specified in Articles 1 through 4.
4. The Contractor is responsible for at least thirty (30) percent of the total cost of the work described in Article 2.
5. The Contractor shall pay all costs of work performed as required by this Contract in excess of the total project budget stated in paragraph 3.
6. The term of this agreement is September 24, 1990 or upon approval by the State, whichever date is later, through October 31, 1991.
7. The State and the Contractor agree and declare the GAC facility once constructed shall be owned by the Contractor and, as such, that the State does not have nor will it ever assert any claim, lien, encumbrance, or interest whatsoever in the GAC facility and that the State has no future responsibility for the operation or maintenance of the facility.
8. The Imminent and Substantial Endangerment Determination for the Crafton-Redlands Hazardous Substances Release Site prepared by the State Department of Health Services is incorporated herein by reference.
9. Contract Manager (State)
 - a. The State shall implement the contract through a single administrator herein called the "Contract Manager". John A. Hinton is designated as "Contract Manager" for this agreement. The State may change the Contract Manager through written notification to the Contractor.
 - b. The Contract Manager or his successor or designee shall make all determinations and take all actions as are appropriate under this contract, subject to the limitations of California statutes and administrative regulations.

- c. No decisions of persons other than the Contract manager or his successor or designee shall be binding on the Contract Manager or the State.
- d. All official communication from Contractor to State shall be directed to the Contract Manager. The Contract Manager's mailing address is:

Department of Health Services
Toxic Substances Control Program
Region 4
245 West Broadway, Suite 350
Long Beach, CA 90802
Telephone (213) 590-4868

10. Contractor Representative

The representative for the Contractor shall be Seong H. Kim, Utilities Director. The Contractor may change its representative upon written notification to the State and approval by the Contract Manager or his successor or designee. The Contractor Representative's mailing address is Redlands Municipal Utilities Department, P. O. Box 3005, Redlands, CA 92373, telephone (714) 798-7698.

11. The Contractor further agrees that its performance of work and services under this contract shall conform to professional standards.

12. Notice of Delay

Whenever the Contractor has knowledge that any actual or potential situation (including, although not limited to, labor disputes) is delaying or threatens to delay timely performance of the work under this contract, the Contractor shall give timely verbal notice by telephone. Contractor shall, within (10) working days after learning of the situation, give written notice and provide all relevant information to the Contract Manager. The Contractor shall require such notice from all subcontractors.

13. Estimated Project Budget

The project line-item budget (Article 3) is, except for engineering services, a preliminary estimation of actual costs. Final detailed cost estimates shall be developed by the Contractor and submitted to the Contract Manager upon acceptance by the Contractor of bids for applicable labor, materials, equipment, and services. Actual costs billed to the State under this contract shall not exceed the total specified in paragraph 3 of this agreement.

14. Payments

- A. Progress payments to the Contractor shall be made not more often than monthly in arrears for all labor, materials, services, and expenses as specified in Article 3 in accordance with and in an amount not to exceed the total amount payable stated in paragraph 3 of this agreement. Line item shifts may be made upon written approval of the Contract Manager.
- B. Payments shall be made in compliance with this section and Article 1, Section 1.11., "Approval of Work" and Articles 2, 3, and 4. Any and all funds disbursed to the Contractor under this contract shall be solely for reimbursement of eligible project costs.
- C. Ten percent (10%) of each approved invoice amount shall be withheld pending final completion of the contract and the State's approval of the Contractor's performance including but not limited to the final report required by paragraph 21 of this contract.

15. Invoicing

- A. The Contractor shall invoice the State not more often than monthly upon completion of Tasks and Subtasks as specified in Articles 2 and 4 and in accordance with approved plans and specifications. Invoices shall be submitted to the Department of Health Services in quadruplicate on forms approved in advance by the Contract Manager. Invoices shall identify the Contractor's full name and address, the State contract number, and the period for which the costs are incurred against the contract. Invoices will be mailed to:

Department of Health Services
Toxic Substances Control Program
Chief, Contracts and Grants Administration Unit
714/744 "P" Street
P. O. Box 942732
Sacramento, CA 94234-7320

- B. All invoices shall be specific and shall include adequate supporting documentation including, task description, quantities and unit prices, receipts or other verifying information (as requested by State). If the invoice requires correction or additional information, the State will notify the Contractor within thirty (30) working days of receipt of invoice.
- C. The State shall submit approved invoices to the State Controller for payment within sixty (60) days following receipt of a proper and complete invoice from the Contractor. The State will strive to review and submit approved invoices for payment in the shortest time possible.

16. Overpayments by State and Refunds

- A. Any overpayment by the State shall be rebated by the Contractor within ninety (90) days after the State's formal request for said overpayment.
- B. The Contractor agrees that any refunds, rebates, credits or other amounts (including any interest earned on such amounts) accruing to or received by the Contractor under this contract shall be paid by the Contractor to the State to the extent that they are properly allocable to costs for which the Contractor has been paid by the State under this contract.

17. Use of Subcontractors, Competitive Bidding

- A. The Contractor shall be responsible for all contract services, including services provided by subcontractors. Further, the Contractor shall be the State's sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.
- B. Selection of subcontractors will be subject to approval by the State. The Contractor is totally responsible for adherence by the subcontractors to all provisions of the contract.
- C. As directed by the State, all documents used in subcontractor selection must be presented in writing to the State and maintained for possible future audit as specified in this paragraph.
- D. The Contractor shall disclose to State, prior to award of a subcontract, any business relationship it may have with a bidder on the subcontract. Failure by Contractor to so disclose may void the subcontract if awarded to such a bidder.
- E. Fees for all services rendered by subcontractors shall be for work performed in relationship to this contract and shall not exceed the schedules of fees for these services approved by the City Council for the City of Redlands.

18. Travel, Per Diem, and Expenses

- A. Any reimbursement for necessary travel and per diem shall be for actual costs at rates not to exceed those amounts paid to the State's represented employees under collective bargaining agreements currently in effect. Travel costs must be supported by receipts and vouchers in accordance with State requirements (California Code of Regulations, Title 2, Article 8). No travel outside the State of California shall be reimbursed unless prior written authorization is made by the State. Travel and per diem claims shall be made on forms provided by the State.

B. The State will not pay any surcharges, profit or other fees on costs charged to travel or expenses.

19. Force Majeure

Neither the State nor the Contractor, including the Contractor's subcontractors, if any, shall be responsible hereunder for any unforeseeable delay, default, or nonperformance of this Contract, other than the payment of monies due hereunder, to the extent that such delay, default, or nonperformance is caused by an act of God, weather, accident, labor strike, fire, explosion, riot, war, rebellion, sabotage, flood, epidemic, act of government, authority in either its sovereign or contractual capacity, labor, material equipment or supply shortage, or any other cause beyond the reasonable control of such party.

20. Progress Reports

In addition to those reports required by the Statement of Work, the Contractor shall submit to the Contract Manager, a progress report no less frequently than monthly. The progress report shall be in such detail as to define the actual work performed by the Contractor as specified in the Statement of Work. Each monthly report shall include:

- (1) the status of task;
- (2) progress to date with percent of completion;
- (3) an update indicating cost of work done monthly;
- (4) the cumulative total cost relative to the project budget;
- (5) a statement of activity anticipated during the upcoming report period which includes a description of equipment techniques, and materials to be used or evaluated, and, if appropriate;
- (6) a statement of difficulties encountered during the reporting period and actions taken to resolve such difficulties.

21. Final Report

A final report shall be submitted to the State within thirty (30) days of completion of all tasks specified in Article 3. The report shall summarize all work completed under the contract. A summary of all expenditures subject to payment under the contract shall be included in the final report.

22. Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises on which they are being performed. If any inspection or evaluation is made by the State of the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the State representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

23. Rights in Data

- A. Subject Data - As used in this clause, the term "Subject data" means writings, sound recordings, pictorial reproductions, drawings, designs or graphic representations, procedural manuals, forms, diagrams, work flow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are first produced or developed under this contract. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.
- B. Federal Government and State Rights - Subject only to the provisions of C. below, the Federal Government and State may use, duplicate, or disclose in any manner and for any purpose whatsoever, and have or permit others to do so, all subject data delivered under this contract.
- C. License to Copyrighted Data - In addition to the Federal Government and State rights as provided in B. above, with respect to any subject data which may be copyrighted, the Contractor agrees to and does hereby grant to the Federal Government and State a royalty-free, nonexclusive and irrevocable license throughout the world to use, duplicate, or dispose of such data in any manner for Federal or State government purposes and to have or permit others to do so. Provided, however, that such license shall be only to the extent that the Contractor now has, or prior to completion or final settlement of this contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

24. Documents and Written Reports

Any document or written report prepared as a requirement of this contract shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts and subcontracts relating to the preparation of such document or report.

ARTICLE 1

GENERAL TERMS AND CONDITIONS

1.0 Effect of Statutory Funding Limitations

- 1.0.1 It is mutually understood between the parties that this agreement may have been written before ascertaining the availability of congressional and State appropriation of funds for the mutual benefit of both parties in order to avoid program and fiscal delays which would occur if the agreement were executed after that determination was made.
- 1.0.2 This agreement is valid and enforceable only if sufficient funds are made available to State by the State Budget Acts of the current and any subsequent years that this contract remains in effect. In addition, this agreement is subject to any additional restrictions, limitations, or conditions enacted by the Legislature and contained in the Budget Act or any statute enacted by the Legislature which may affect the provisions, terms or funding of this agreement in any manner.
- 1.0.3 It is mutually agreed that if sufficient funds are not appropriated to the program, this agreement shall be amended to reflect any reduction in funds. State retains the option to void the agreement to reflect any reduction of funds.

1.1 Entire Agreement

This Agreement supersedes all prior agreements, oral or written, made with respect to the services provided herein. This Agreement, including all specifically incorporated attachments and references, constitutes the sole and entire agreement of the parties.

1.2 Contract Limits

Other than as specified herein, no document or communication passing between the parties shall be deemed a part of this contract.

1.3 Severability

Should any provision of this contract be declared or found to be illegal, unenforceable, ineffective, or void, then each party shall be relieved of any obligations arising in such provision. All other provisions of this contract shall remain in effect.

1.4 Contract Communication

Any formal communication under the contract shall be in writing and signed by Contractor. Any verbal communication between Contractor and the Contract Manager, having contract implications, must be confirmed in writing.

1.5 Insurance

Contractor shall furnish to State a Certificate of Insurance or a statement of self insurance stating that there is general liability (excluding environmental impairment liability coverage) and automobile insurance presently in effect for any vehicle used by Contractor for the purposes of this contract with a combined single limit (CSL) of not less than \$500,000 per occurrence, unless an alternative level of insurance requirement is established in the Statement of Work (SOW). The Certificate of Insurance shall provide that the:

1.5.1 Insurer shall not cancel the insured's coverage without thirty (30) days prior written notice to State;

1.5.2 State of California, the United States, its officers, agents, employees, and servants are included as additional insureds, but only insofar as operations under this contract are concerned;

Contractor agrees that the liability insurance herein provided for shall be in effect at all times during the term of this contract. If this insurance coverage expires or is scheduled to expire at any time during the term of this contract, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing the required insurance coverage for not less than one (1) year. New certificates of insurance are subject to the approval of State, and Contractor agrees that no work or services shall be performed prior to State approval. State may terminate this contract, if Contractor fails to keep required insurance coverage in effect throughout the term of this agreement. If subcontractors performing work under this contract do not have insurance equivalent to the above, Contractor liability shall provide such coverage for the subcontractor.

1.6 Assignment of Rights, Delegation of Duties

Contractor shall not transfer by assignment, delegation, subcontract or novation the performance or benefits of this contract or any part thereof, except as provided herein, without the prior written approval of State as to each such action. State's consent to one or more assignments, delegations, or subcontracts hereunder shall not constitute a waiver or diminution of State's absolute right to consent

to each and every subsequent assignment or subcontract. Contractor may not, without prior written consent of State, assign any other right that he may have under this contract.

1.7 Health and Safety Responsibility

Contractor shall be solely responsible for the health and safety protection of its employees.

1.8 Contractor Resource Levels, Standards

Contractor shall meet all the contractual requirements and responsibilities listed herein. Contractor shall provide sufficient resources, including staff support, to fully execute all responsibilities required by this contract.

Contractor further agrees that its performance of work and services under this contract shall conform to professional standards.

1.9 Contract Amendments and Change Orders

Contractor shall be flexible in meeting State's need to make various changes under the contract. Timely and accurate implementation of ordered changes is a critical component of this contract.

In the event that State significantly alters the Scope of Work, total amount payable or any other provision of this contract, said action shall be made through a negotiated contract amendment, subject to approval by the State.

1.10 Cost or Pricing Data

Contractor and any subcontractors shall submit cost or pricing data as requested by State and in accordance with 48 CFR, Chapter 1, Subparts 31.1 and 31.2.

1.11 Approval of Work

All work performed under this contract shall be inspected and reviewed by the Contract Manager or designee and shall require approval by the Contract Manager or designee prior to payment. Payment for services is conditioned upon Contractor's conformance to contract terms and acceptance by State. Such acceptance shall not be unreasonably withheld. The Contract Manager or his/her designee will advise Contractor in what areas it is not acceptable.

1.12 Notice

Notice to either party may be given by certified mail to each respective party. Such notice shall be effective when received, as indicated by post office records, or if deemed undeliverable by the post office, such notice shall be effective nevertheless 15 days after

mailing. Alternatively, notice may be given by personal delivery to the party at the address designated. Such notice shall be deemed effective when delivered unless a legal holiday for State offices commences during the 24 hour period, in which case the effective time of the notice shall be postponed 24 hours for each such intervening legal holiday day.

1.13 Audits for Compliance with Public Contract Code Section 10115 (Minority and Women Business Participation)

Contractor agrees that the awarding department or its delegatee will have the right to review, obtain, and copy all records pertaining to performance of the contract. Contractor agrees to provide the awarding department or its delegatee with any relevant information requested and shall permit the awarding department or its delegatee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with Public Contract Code Section 10115 et seq. and Title 2, California Code of Regulations, Section 1896.60 et seq. Contractor further agrees to maintain such records for period of three (3) years after final payment under the contract.

1.14 Taxes

Payments to Contractor shall be considered to include reimbursement for all taxes paid by Contractor by reason of this contract.

1.15 Examination of Accounts, Audits, Records, and Subcontract Language

1.15.1 Contractor's facility or office or such part thereof as may be engaged in the performance of this contract and all records pertinent to this contract, wherever located, shall be subject at all reasonable times to inspection, audit, and reproduction of records by State or any of its duly authorized representatives.

1.15.2 Contractor shall maintain books, records (including records to establish medical monitoring program), documents, and other evidence, accounting procedures, and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this contract, including Contractor's matching costs and expenses.

1.15.3 Contractor shall preserve and make available his records (1) for a period of three years from the date of final payment under this contract, and (2) for such longer period, if required by applicable statute or any other clause of this contract.

- 1.15.4 If this contract is completely or partially terminated, the records relating to the work completed shall be preserved and made available for a period of three years from the date of any resulting final contract settlement. The Contractor shall obtain the Contract Manager's written approval prior to destroying said records.
- 1.15.5 If any litigation, claim, negotiation, audit, or other action involving Contractor's records has been started before the expiration of the three year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three year period, whichever is later. Contractor further agrees to include the following clause in all subcontracts written for work under the terms of this agreement:

"(Name of Vendor or Subcontractor) agrees to maintain and preserve until three years after termination of (Contractor's Name) agreement or contract with the State of California, and to permit State or any of its duly authorized representatives, including the Comptroller General of the United States or any federal Environmental Protection Agency representative, to have access to and to examine and audit any pertinent books, documents, papers, and records of (name of subcontractor or vendor) related to this (purchase order or subcontract)".

1.16 Accounting Requirements

Contractor shall establish an accounting system using generally accepted accounting principles that will provide information for reports to State and which will provide documentation for the fiscal activities of the organization. The accounting system must include adequate cost accounting procedures that will provide accurate costing for not only the contract but also by subcontractor and for change orders, if any.

For potential change order purposes, documentation must be maintained for all allocations of costs and sufficient detail must be available on all allowable costs to justify that such costs are appropriate and reasonable. The original cost basis cannot be revised without State's written approval. Accounting procedures must be consistent with 48 CFR, Part 31.1 and 31.2.

1.17 Confidentiality

Contractor and State understand that each party may come to possession of information and/or data which may be deemed confidential or proprietary by the person or organization furnishing the information or data. Such information or data, in any form (electronic, mechanical or other recording), in the possession of State, may be subject to disclosure under the California Public Records Act, commencing with Government Code Section 6250. State agrees not to disclose such

information or data furnished by the contractor and to maintain such information or data as confidential, when so designated by Contractor in writing at the time it is furnished to State, only to the extent that such information or data is exempt from disclosure under the California Public Records Act. In addition, both State and Contractor agree not to use such confidential or proprietary information for any purpose other than performance of this Agreement.

1.17.1 Obligations of the parties with respect to such confidential and proprietary information will terminate after:

- o Such information appears in issued patents or printed publications or is shown to be in public domain for reasons other than breach of this Agreement; or,
- o The party receiving such information can show by written records that such information was in its possession prior to acquiring such information from the other party to this agreement or that such information was independently developed by its employees who did not have knowledge of such information.

1.18 Press Releases

Contractor will not issue any press release or make available (except to State) any reports, information, inventions, improvements, discoveries or data obtained, prepared, assembled or developed by Contractor pursuant to this Agreement, without prior written approval of State while the Agreement is in force. State's approval shall not be unreasonably withheld.

1.19 Stop Work Notice

Contractor shall immediately cease all work under this Agreement upon receiving a written notice from State to stop work.

1.20 Remedies

Unless otherwise expressly provided herein, the rights and remedies hereunder are in addition to, and not in limitation of, other rights and remedies under the Agreement, at law or in equity, and exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

1.21 Controlling Law

All questions concerning the validity and operation of the Agreement and the performance of the obligations imposed upon the parties hereunder shall come within the jurisdiction of and be governed by the laws of the State of California.

1.22 Workers' Compensation Insurance

Contractor shall carry Workers' Compensation Insurance for all of its employees who will be engaged in the performance of this contract and agrees to furnish to State satisfactory evidence thereof at any time State may request.

In accordance with the provisions of Labor Code Section 3700, Contractor will be required to secure the payment of workmen's compensation to its employees.

1.23 Waiver

No waiver of any breach of this contract shall be held as a waiver of any other or subsequent breach. All remedies afforded in this contract shall be taken and construed as cumulative; that is, in addition to every other remedy provided therein or by law. The failure of State to enforce at any time any of the provisions of this agreement, or to require at any time performance by Contractor of any of the provisions therefore, shall in no way be construed to be a waiver of such provisions nor in any way affect the validity of this agreement or any part thereof or the right of State to thereafter enforce each and every such provision.

1.24 Licenses

Contractor and all subcontractors shall be responsible for obtaining and maintaining current all applicable State and local licenses, registrations, permits, and certifications during the performance period of this contract.

1.25 Termination of Contract

1.25.1 Bankruptcy

In the event proceedings in bankruptcy are commenced by or against Contractor, or if Contractor is adjudged bankrupt, or a receiver in bankruptcy is appointed and qualifies, then State may terminate this agreement and all further rights and obligations hereunder, by giving five (5) days notice in writing in the manner specified herein.

1.25.2 Gratuities

State may, by written notice to Contractor, terminate this contract if it is found by the Director, Department of Health Services that gratuities were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of State with a view toward securing a contract or securing favorable treatment with respect to awarding or amending or making of any determination with respect to

performance of such contract. In the event this contract is terminated as provided herein, State shall be entitled to: (1) pursue the same remedies against Contractor as it could pursue in the event of a breach of the contract by Contractor; and, (2) exemplary damages in an amount which shall be not less than three nor more than ten times the cost incurred by Contractor in providing such gratuities to any such officer or employee, as a penalty in addition to any other damages to which it may be entitled by law. The rights and remedies of State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

1.25.3 Termination for Default

- 1.25.3.1 State may terminate performance of work under this contract in whole, or in part, whenever Contractor or its subcontractors shall default in performance of this contract and shall fail to cure such default within a period of ten (10) days (or such longer period as the Contract Manager may allow) after receipt from the Contract Manager of a written notice specifying the default. Such termination shall be referred to herein as "Termination for Default".
- 1.25.3.2 If after notice of termination of this contract for default, it is determined by State or a court that Contractor was not in default or that Contractor's failure to perform or make progress in performance was due to causes beyond the control or without the error or negligence of Contractor, or any subcontractor, the notice of termination shall be deemed to have been issued as a termination for the convenience of State, and the rights and obligations of the parties shall be governed accordingly.
- 1.25.3.3 In the event State terminates this contract in full or in part as provided in this clause, State may procure, upon such terms and such manner as the Contract Manager deems appropriate, supplies or services similar to those terminated, and Contractor shall be liable to State for any excess costs reasonably incurred for such similar supplies or services. Contractor shall also be liable for excess administrative costs, if the failure to perform arises out of an intentional act or negligence of Contractor or its subcontractors. Contractor's refusal to accept or perform work assigned under the terms of this agreement shall be deemed an intentional act in default of this agreement.

1.25.4 Termination for Convenience

1.25.4.1 Termination for Convenience of Contractor

Contractor may terminate this contract upon 30 days written notice to State. Such notice shall be served upon the State Contract Manager.

1.25.4.2 Termination for Convenience of State

State may terminate performance of work under this contract in whole, or in part, whenever for any reason State shall determine that such termination is in the best interest of State. Upon receipt of notice of termination for convenience, Contractor shall be paid, at the rates specified in the contract for work performed prior to the effective date of termination.

Contractor further agrees to use all reasonable efforts to mitigate expenses and obligations hereunder. In such event, State shall pay Contractor for all satisfactory services rendered and expenses incurred prior to such notice of termination, which could not by reasonable efforts of Contractor have been avoided, but not in excess of contract maximum amount payable.

1.26 Procedure for Termination of Contract

Upon delivery to Contractor of a notice of termination specifying the termination as defined in Section above, the extent to which performance of work under this contract is terminated, and the date upon which such termination becomes effective, Contractor shall follow the procedure set out in this section.

If State is delayed by cause other than Contractor or subcontractor in phasing out the services provided by Contractor by the effective date of termination, Contractor shall provide extended services for a period not to exceed three (3) months from the effective date of termination; provided, however, the services shall be paid for only at the prices applicable had the contract not been terminated.

1.26.1 Upon receipt of a notice of termination and except as otherwise directed by the Contract Manager, Contractor shall:

- o Stop work under this contract on the date and to the extent specified in the notice of termination, except as required under the Termination Section of this contract;

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- o Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under this contract as is not terminated;
- o Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
- o Assign to State, in the manner and to the extent directed by the Contract Manager, all of the right, title, and interest of Contractor under the orders or subcontracts so terminated, in which case State shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- o Settle, with the prior approval or prior ratification of the Contract Manager, all outstanding liabilities, and all claims arising out of such termination or orders and subcontracts, the costs of which would be reimbursable in whole or in part, in accordance with the provisions of this contract. Approval or ratification by the Contract Manager shall be deemed final and conclusive for all purposes of this clause.
- o Transfer title to State (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Contract Manager, (a) all files, processing systems, data manuals, or other documentation, in any form, that relate solely to the work terminated by the notice of termination; (b) any tangible assets acquired in respect to performance of the work terminated by the notice of termination;
- o Complete the performance of such part of the work as shall not have been terminated by the notice of termination; and,
- o Take such action as may be necessary, or as the Contract Manager may direct, for the protection and preservation of the property related to this contract which is in the possession of Contractor and in which State has or may acquire an interest.
- o Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable cost under this clause. Contractor shall submit to the Contract Manager a list, certified as to quantity and quality, of any or all items of value acquired

under the terms of this agreement (excluding items previously disposed of, as directed or authorized by the Contract Manager), and may request State to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, State will accept such items and remove them or enter into a storage agreement covering the same, provided that the list submitted shall be subject to verification by the Contract Manager or designee upon removal of the items or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

- 1.26.2 After receipt of a notice of termination, Contractor shall submit its termination claim to the Contract Manager in the form and with the certification prescribed by the Contract Manager. Such claim shall be submitted promptly, but in no event later than one (1) year from the effective date of termination, unless one or more extensions in writing are granted by the Contract Manager upon request of Contractor made in writing within such one (1) year period or authorized extension thereof. However, if the facts justify such action, the Contract Manager may extend the period for submitting the termination claim. Upon failure of Contractor to submit its termination claim within the time allowed, the Contract Manager may determine on the basis of information available, the amount due to Contractor by reason of the termination and shall thereupon cause to be paid to Contractor the amount so determined, after appropriate State reviews.
- 1.26.3 Subject to the provisions of this agreement, Contractor and Contract Manager may agree upon the amounts to be paid to Contractor by reason of total or partial termination of work pursuant to this article and amend the contract accordingly, subject to appropriate State approval.
- 1.26.4 If Contractor and the Contract Manager fail to agree in whole or in part as to the amounts to be paid to Contractor in connection with the termination of work pursuant to this article, the Contract Manager shall determine on the basis of information available the amounts, if any, due Contractor by reason of termination and shall thereupon cause to be paid Contractor the amount so determined, after appropriate State reviews.

Contractor shall have the right of appeal under the section entitled, "Disputes", from any such determination made by the

Contract Manager. In any case where the Contract Manager has made such determination of the amount due, State shall pay to Contractor the following:

- o If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contract Manager; or,
- o If an appeal has been taken the amount finally determined on such appeal.

1.26.5 In arriving at the amount due Contractor under this clause, there shall be deducted:

- o All unliquidated advance or other payments made to Contractor applicable to the terminated portion of this contract;
- o Any claim which State may have against Contractor in connection with this contract; and,
- o The agreed price for or the proceeds of sale of any materials, supplies, or other things acquired by Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to State.

1.26.6 State may, at its discretion, make partial payments and payments on account against costs incurred by Contractor in connection with the terminated portion of this contract whenever Contract Manager determines the aggregate of sub payments to not exceed Contractor's entitlement hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess will be payable by Contractor to State upon demand together with interest computed at the rate State would have earned had the excess payment not occurred, for the period the excess payment is held by Contractor.

1.26.7 Contractor shall not be allowed consequential changes.

1.27 Captions

The clause headings and any indicates or tables of contents appearing in this agreement have been inserted for the purpose of convenience and ready reference. They do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the clauses to which they pertain.

1.27 Nondiscrimination

During the performance of this contract, Contractor and its sub-contractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and sub-contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

1.29 Disputes

Except as otherwise provided in this section, if Contractor disputes a decision of the Contract Manager regarding the performance of this contract or other issue for which the Contract Manager is authorized by this contract to make a binding decision, Contractor shall provide written dispute notice to the Contract Manager within fifteen (15) calendar days after the date of receipt of the decision of the Contract Manager.

1.29.1 The written dispute notice required shall contain the following information:

- o The decision under dispute;
- o The reason(s) Contractor believes the decision of the Contract Manager to have been in error;
- o Identification of all documents and substance of all oral communication which support Contractor's position; and,
- o The dollar amount in dispute (if known).

- 1.29.2 Contract Manager shall issue a dispute decision within ninety (90) days of receipt of the dispute notice. A copy of this decision shall be sent to Contractor by certified mail, Return Receipt Requested, or by any other method which provides evidence of receipt.
- 1.29.3 The decision of the Contract Manager shall contain the following information:
- o A discretion of the dispute;
 - o A reference to pertinent contract provisions;
 - o A statement of the factual areas of agreement or disagreement; and,
 - o A statement of the Contract Manager's decision with supporting rationale.
- 1.29.4 The decision of the Contract Manager shall be final and conclusive unless within thirty (30) days from the date of receipt of the Contract Manager's decision, Contractor files with the Contract Manager a notice of appeal addressed to the Director, Department of Health Services.
- 1.29.5 In connection with any appeal proceeding under this contract, both parties shall be afforded an opportunity to be heard and to offer evidence and oral argument in support of their positions. The Director shall appoint one or more examiners to conduct appeal proceedings and to make recommendations to the Director as to the proper findings and conclusions to be reached in the appeal. During the pendency of any dispute, Contractor shall diligently continue all contract work and comply with all Contract Manager orders and directions.

1.30 Travel and Subsistence Payments

Whenever State specifically authorizes travel and/or per diem reimbursements, such reimbursements shall not exceed the rates paid to State employees and shall be calculated on an actual cost basis in accordance with State administrative guidelines. The point of origin used for calculating all authorized travel and per diem payments will be from the Contractor's actual point of origin to the authorized destination.

1.31 Clean Air and Water

In connection with Government Code Section 14381 and Water Code Section 13301, Contractor and its subcontractors shall comply with all air and water pollution rules, regulations, ordinances, and statutes which apply to any work performed pursuant to the Contract, including any air pollution rules, regulations, ordinances, and statutes specified in Government Code Section 11017.

1.32 Anti-Trust Claims

For all construction service agreements, Contractor offers and agrees and will require all of his subcontractors and suppliers to agree to assign to the awarding body all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, Part 2, Division 7 (Section 11700 et seq.), Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. The assignment made by Contractor and all additional assignments made by the subcontractors and suppliers shall be deemed to have been made and will become effective at the time the awarding body tenders final payment to contractor, without further acknowledgement or the necessity of tenders payment to contractor, without further acknowledgement or the necessity of tendering to the awarding body any written assignments".

- o If an awarding body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Government Code sections 4550-4554, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- o Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under Government Code sections 4550-4554, if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

1.33 Current and Former State Employees

1.33.1 Current State Officers and Employees

1. Contractor shall not utilize in the performance of this contract any State Officer or employee in the State civil service or other appointed State official unless the employment, activity, or enterprise is required as a condition of the officer or employee's regular State employment. Employee in the state civil service is defined to be any person legally holding a permanent or intermittent position in the state civil service.
2. If any state officer or employee is utilized or employed in the performance of this contract, Contractor shall first obtain written verification from the state that the employment, activity or enterprise is required as a condition of the officer's employee's or official's regular state employment and shall keep said verification on file for three years after the termination of this contract.
3. Contractor may not, in connection with this contract, accept volunteer or occasional work of any currently employed state officer, employee or official.
4. Contractor shall not employ, in connection with this contract, any state officer, employees or officials who are on paid or unpaid leave of absence from their regular state employment.
5. Contractor or anyone having a financial interest in this contract may not be or become a state officer, employee or official during the term of this contract.
6. Occasional or one-time reimbursement of a state employee's travel expense is not acceptable.

(Citation: Public Contract Code Section 10410)

1.32.2 Former State Officers and Employees

1. Contractor shall not utilize in the performance of this contract a formerly employed person of any state agency or department that was employed under the state civil service, or otherwise appointed to serve in state government, if that person was engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency or department. This prohibition shall apply for a two-year period beginning on the date and person left State employment.

2. Contractor shall not utilize within 12 months from the date of separation of service, a former employee of the contracting state agency or department if that former employee was employed in a policy making position in the same general subject area as the proposed contract within the 12 month period prior to the employee leaving state service.

(Citation: Public Contract Code Section 10411).

Failure to Comply With Subparts A or B

1. If Contractor violates any provision of Subparts A or B above, such action by Contractor shall render this contract void.

(Citation: Public Contract Code Section 10420)

1.34 Furnishing of Property by the State or Purchase of Property with State Funds

All equipment, material supplies or property of any kind purchased from funds advanced or reimbursed or furnished by the State under the terms of this contract and not fully consumed in the performance of the contract shall be the property of the State and shall be subject to the provisions of this paragraph, as well as provisions A through G below.

1.34.1 Inventory and Disposition

Contractor shall, at the request of the State, submit an inventory of equipment furnished or purchased under the terms of this contract. Such inventory will be required not more frequently than annually. At the termination of this contract, the Contractor shall provide a final inventory to the State and shall at that time query the State as to the State's requirements, including the manner and method, in returning said equipment to the State. Final disposition of such equipment shall be at state expense in accordance with instructions from the State to be issued immediately after receipt of the final inventory.

- 1.34.2 If the State and at the State's sole option, through its Office of Procurement, purchases any equipment listed in the budget approved for this contract, the cost of said equipment will be deducted from said contract amount. Contractor shall submit to State a separate list of the equipment specifications. State will pay vendor directly for equipment, and title to said equipment will remain with the State. Said equipment will be delivered to the Contractor's address as stated in said contract unless notified by Contractor in writing.

- 1.34.3 Title to state property shall not be affected by the incorporation or attachment thereof to any property not owned by the State, nor shall such state property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.
- 1.34.4 Unless otherwise provided herein, the State shall not be under any duty or obligation to restore or rehabilitate, or to pay the cost of the restoration or rehabilitation of the Contractor's facility or any portion thereof which is affected by removal of any state property.
- 1.34.5 The Contractor shall maintain and administer, in accordance with sound business practice, a program for the utilization, maintenance, repair, protection, and preservation of state property so to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions and instructions which the State may prescribe as reasonably necessary for the protection of state property.
- 1.34.6 For equipment only: Before equipment purchases made by the Contractor are reimbursed by the State, the contractor must submit paid vendor receipts identifying the purchase price, description of the item, serial number, model number, and location where the equipment will be used during the term of this agreement. Said paid receipts will be attached to Contractor's invoices submitted to the State.
- 1.34.7 Equipment shall be identified as directed by State.

1.35 Additional Terms and Conditions (Federal)

In accordance with subpart F of 40 CFR 33.1030, the following federally mandated clauses have been included in this agreement. These clauses shall apply in the event the site becomes federally funded.

1.35.1 Supersession

State and Contractor agree that this and other appropriate clauses in 40 CFR 33.030 apply to that work eligible for EPA assistance to be performed under this agreement and that these clauses supersede any conflicting provisions of this agreement.

1.35.2 Privity of Subagreement

This agreement may be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is, or will be, a party to this agreement or any lower tier subagreement. This agreement is subject to regulations contained in 40 CFR Part 33 in effect on the date of the assistance award for this project.

1.35.3 Changes

1.35.3.1 The following clause applies only to construction service agreements.

- (1) State may at any time, without notice to any surety, by written order designated or indicated to be a change order, make any change in the work within the general scope of the agreement, including but not limited to changes in:
 - (i) Specifications (including drawings and designs);
 - (ii) Time, method or manner of performance of the work;
 - (iii) Recipient-furnished facilities, equipment, materials, services or site, or
 - (iv) Acceleration in the performance of the work.
- (2) A change order shall also be any written order (including direction, instruction, interpretation or determination) from State which causes any change, provided Contractor gives State written notice stating the date, circumstances and source of the order and that Contractor regards the order as a change order.
- (3) Except as provided in this clause, no order, statement or conduct of State shall be treated as a change under this clause or entitle Contractor to an equitable adjustment.
- (4) If any change under this clause causes an increase or decrease in Contractor's cost or the time required to perform any part of the work under this contract, whether or not changed by any order, State shall make an equitable adjustment and modify the agreement in writing. Except for claims based on defective specifications, no claim for any

change under paragraph 1.35.3.1 (2) above shall be allowed for any costs incurred more than 20 days before the contractor gives written notice as required in paragraph 1.35.3. (2). In the case of defective specifications for which the State is responsible, the equitable adjustment shall include any increased cost Contractor reasonable incurred in attempting to comply with those defective specifications.

- (5) If Contractor intends to assert a claim for an equitable adjustment under this clause, it must, within 30 days after receipt of a written change order under paragraph 1.35.3.1 (1) or the furnishing of a written notice under paragraph 1.35.3.1 (2) submit a written statement to state setting forth the general nature and monetary extent of such claim. State may extend the 30-day period. Contractor may include the statement of claim in the notice under paragraph (2) of this change clause.
- (6) No claim by Contractor for an equitable adjustment shall be allowed if made after final payment under this agreement.

1.35.3.2 The following clause applies only to agreements for services.

- (1) State may at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in Contractor's cost or time required to perform any services under this agreement, whether or not changed by any order, State shall make an equitable adjustment and modify this agreement in writing. Contractor must assert any claim for adjustment under this clause in writing within 30 days from the date it receives State notification of change, unless State grants additional time before the date of final payment.
- (2) No services for which Contractor will charge an additional compensation shall be furnished without the written authorization of State.

1.35.3.3 The following clause applies only to agreements for supplies.

- (1) State may at any time, by written order and without notice to the sureties, change the general scope of this agreement in any one or more of the following:
 - (i) Drawings, designs or specifications where the supplies to be furnished are specifically manufactured for the recipient;
 - (ii) Method of shipment of packing; and
 - (iii) Place of delivery
- (2) If any change causes an increase or decrease in the cost or the time required to perform any part of the work under this agreement, whether or not changed by any such order, State shall make an equitable adjustment in the agreement price or delivery schedule, or both and modify the agreement in writing. Contractor must assert any claim for adjustment under this clause within 30 days from the date Contractor receives State's notification of change. If State decides that the facts justify such claim asserted at any time before final payment under this agreement. Where the cost of property made obsolete or excess as a result of a change is included in Contractor's claim for adjustment, State has the right to prescribe the manner of disposition of such property. Nothing in this clause shall excuse Contractor from proceeding with the agreement as changed.

1.35.4 Differing Site Conditions

The following clause applies only to construction service agreements.

- (a) Contractor shall promptly, and before such conditions are disturbed, notify state in writing of:
 - (1) Subsurface of latent physical conditions at the site differing materially from those indicated in this agreement, or
 - (2) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering the type of work provided for in this agreement.

- (b) State shall promptly investigate the reported conditions. If it finds that conditions materially differ and will cause an increase or decrease in Contractor's cost or the time required to perform any part of the work under this agreement, whether or not changed as a result of such conditions, State shall make an equitable adjustment and modify the agreement in writing.
- (c) No claim of Contractor under this clause shall be allowed unless Contractor has given the notice required in paragraph (a) of this clause. However, State may extend the time prescribed in paragraph (a).
- (d) No claim by Contractor for an equitable adjustment shall be allowed if asserted after final payment under this agreement.

1.35.5 Suspension of Work

The following clause applies only to construction service agreements.

- (a) State may order Contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as State may determine to be appropriate for the convenience of State.
- (b) If the performance of all or any part of the work is suspended, delayed or interrupted for an unreasonable period of time by an Act of State in administration of this agreement, or by State's failure to act within the time specified in this agreement (or if no time is specified, within a reasonable time), State shall make an equitable adjustment for any increase in the cost of performance of this agreement (excluding profit) necessarily caused by such unreasonable suspension, delay or interruption and modify the agreement in writing. However, no adjustment shall be made under this clause for any suspension, delay or interruption to the extent (1) that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this agreement.
- (c) No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before Contractor notified State in writing of the act, or failure to act, involved (this requirement does not apply to a claim resulting from a suspension order), and (2) unless the amount claimed is asserted in writing as soon as practicable after the termination of such suspension, delay or interruption, but not later than the date of final payment under this agreement.

1.35.6 Termination

- (a) This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- (b) This agreement may be terminated in whole or in part in writing by State for its convenience, provided that Contractor is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- (c) If termination for default is effected by State, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed on unperformed services or other work, and (2) any payment due to Contractor at the time of termination may be adjusted to cover any additional costs to State because of Contractor's default. The termination shall provide for payment to Contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by Contractor relating to commitments which had become firm prior to the termination.
- (d) Upon receipt of a termination action under paragraphs (a) or (b) above, Contractor shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to State all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by Contractor in performing this agreement, whether completed or in process.
- (e) Upon termination under paragraphs (a) or (b) above, State may take over the work and may award another party an agreement to complete the work under this agreement.

- (f) If, after termination for failure of Contractor to fulfill contractual obligations, it is determined that Contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of State. In such event, adjustment of the agreement price shall be made as provided in paragraph (c) of this clause.

1.35.7 Remedies

Unless otherwise provided in this agreement, all claims, counterclaims, disputes and other matters in question between State and Contractor arising out of, or relating to, this agreement or the breach of it will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of California.

1.35.8 Price Reduction for Defective Cost or Pricing Data

Note: The following clause applies to (1) any agreement negotiated between State and Contractor in excess of \$100,000; (2) negotiated agreement amendments or change orders in excess of \$100,000 affecting the price of formally advertised, competitively awarded, fixed price agreement, or (3) any subcontract or purchase order in excess of \$100,000 under this agreement other than a formally advertised, competitively awarded, fixed price agreement. This clause does not apply to agreements awarded on the basis of effective price competition.

- (a) Contractor and subcontractors, where appropriate, assure that the cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated agreements, subcontracts and change orders is based on current, accurate and complete data supported by their books and records, if State or EPA determines that any price (including profit) negotiated in connection with this agreement, subcontract or amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate or not current at the time of submission, then such price or cost or profit shall be reduced accordingly and State shall modify the agreement in writing to reflect such action.
- (b) Failure to agree on a reduction shall be subject to the remedies clause of this agreement.

[Note: Since the agreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with subcontracts, Contractor may wish to include a clause in each subcontract requiring

the subcontractor to appropriately indemnify Contractor. Any subcontractor subject to such indemnification shall require substantially similar indemnification for defective cost or pricing data submitted by their subcontractors].

1.35.9 Audit; Access to Records

- (a) Contractor shall maintain books, records, documents and other evidence directly pertinent to performance on EPA funded work in accordance with generally accepted accounting principles and practices and 40 CFR Part 30 in effect on the date of execution of this agreement. Contractor shall also maintain the financial information and data used in the preparation or support of the cost submission required under 40 CFT 33.290 for any negotiated agreement or change order and a copy of the cost summary submitted to State. The United States environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, and State or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. Contractor will provide proper facilities for such access and inspection.
- (b) If this is a formally advertised, competitively awarded, fixed price agreement, Contractor agrees to make paragraphs (a) through (g) of this clause applicable to all negotiated change orders and agreements, amendments affecting the agreement price. In the case of all other types of agreements, Contractor agrees to make paragraphs (a) through (g) applicable to all subcontracts it awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (g) of this clause applicable to all change orders directly related to project performance.
- (c) audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agencies.
- (d) Contractor agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).

- (e) Records under paragraphs (a) and (b) above shall be maintained by Contractor during performance on EPA assisted work under this agreement and for the time periods specified in 40 CFR Part 30. In addition, those records which relate to any controversy arising under an EPA assistance agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained by Contractor for the time periods specified in 40 CFR Part 30.
- (f) Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.
- (g) This right of access clause applies to financial records pertaining to all agreements (except formally advertised, competitively awarded, fixed price agreements) and all agreement change orders regardless of the type of agreement, and all agreement amendments regardless of the type of agreement. In addition this right of access applies to all records pertaining to all agreements, agreement change orders and agreement amendments:
 - (1) To the extent the records pertain directly to agreement performance:
 - (2) If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
 - (3) If the agreement is terminated for default or for convenience.

1.35.10 Covenant Against Contingent Fees

Contractor assures that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by subcontractor for the purpose of securing business. For breach or violation of this assurance, State shall have the right to annul this agreement without liability or, at its discretion, to deduct from the agreement price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

1.35.11 Gratuities

- (a) If State finds after a notice and hearing that Contractor or any of Contractor's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise), to any official, employee or agent of State or EPA in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this agreement, State may, by written notice to Contractor, terminate this agreement. State may also pursue other rights and remedies that the law or this agreement provides. However, the existence of the facts on which State bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this agreement.
- (b) In the event this agreement is terminated as provided in paragraph (a), State may pursue the same remedies against Contractor as it could pursue in the event of a breach of the agreement by Contractor, and as a penalty, in addition to any other damages to which it may be entitled by law, State will be entitled to exemplary damages in an amount (as determined by State) which shall be not less than three nor more than ten times the costs Contractor incurs in providing any such gratuities to any such officer or employee.

1.35.12 Buy American

This clause applies only to construction agreement awards under 40 CFR Part 35, subparts E and I. In accordance with section 215 of the Clean Water Act (33 U.S.C. 1251 et seq.) and implementing EPA regulations, Contractor agrees that preference will be given to domestic construction material by Contractor, subcontractors, materialmen and suppliers in the performance of this agreement.

1.35.13 Responsibility of Contractor

- (a) Contractor is responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports and other services furnished by Contractor under this agreement. If the agreement involves environmental measurements or data generation, Contractor shall comply with EPA quality assurance requirements in 40 CFR 30.503. Contractor shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its designs, drawings, specifications, reports and other services.

- (b) Contractor shall secure the professional services necessary to accomplish the work specified in this agreement in accordance with this agreement and applicable EPA requirements in effect on the date of execution of the assistance agreement for this project.
- (c) State's or EPA's approval of drawings, designs, specifications, reports and incidental work or material furnished hereunder shall not in any way relieve Contractor of responsibility for the technical adequacy of its work. Neither the State's, nor EPA's review, approval, acceptance or payment for any of the services shall be construed as a waiver of any rights under this agreement or of any cause for action arising out of the performance of this agreement.
- (d) Contractor shall be and shall remain, liable in accordance with applicable law for all damages to State or EPA caused by Contractor's negligent performance of any of the services furnished under this subagreement, except for errors, omissions or other deficiencies to the extent attributable to State, State-furnished data or any third party. Contractor shall not be responsible for any time delays in the project caused by circumstances beyond Contractor's control.
- (e) Contractor's obligations under this clause are in addition to Contractor's other express or implied assurances under this agreement or State law and in no way diminish any other rights that State may have against Contractor for faulty materials, equipment or work.

1.35.14 Final Payment

Under this agreement, upon satisfactory completion of the work as a condition before final payment or as a termination settlement, Contractor shall execute and deliver to State, a release of all claims against the State arising under, or by virtue of, this agreement, except claims which are specifically exempted by Contractor to be set forth therein. Unless otherwise provided in this agreement or by State law, final payment under this agreement or settlement upon termination shall not constitute a waiver of State's claims against Contractor or its sureties, including applicable performance and payment bonds.

1.35.15 Patents, Data and Copyrights

Contractor shall comply with all federal and EPA requirements and regulations pertaining to reporting and patent rights, if this agreement involves research, developmental, experimental, or demonstration work with respect to any discovery or invention which arises or is developed in the conduct of work under the agreement.

1.35.16 Violating Facilities List

For all agreements in excess of \$100,000, Contractor shall comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and EPA regulations (40 CFR Part 150 which prohibit the use of facilities included on the EPA List of Violating Facilities for any work conducted under this agreement.

1.35.17 Energy Efficiency Clause

Contractor shall comply with mandatory standards and policies on energy efficiency contained in State's energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

ARTICLE 2
STATEMENT OF WORK
Redlands Municipal Utilities Department

Design, Construction, and Installation of a Granular Activated Carbon Treatment Facility for Removing TCE/DBCP from the Crafton - Redlands site in the Bunker Hill Water Sub-Basin

- 2.0 The City of Redlands Municipal Utilities Department (Contractor) shall administer and complete design, construction, and installation of a Granular Activated Carbon (GAC) treatment facility to remove at least 99.7% of volatile organic and pesticide contaminants, consisting primarily of trichloroethylene (TCE) and 1, 2 dibromo-3-chloropropane (DBCP) from the Bunker Hill groundwater Sub-basin. When completed this project shall:
- a. Initiate the cleanup of a major groundwater basin that is currently listed on the "Expenditure Plan for the Hazardous Substances Cleanup Bond Act of 1984".
 - b. Intercept and remove contaminants in the Bunker Hill groundwater sub-basin that are threatening the major source of the drinking water supply for the cities of Redlands, Loma Linda, and Riverside.
 - c. Help enable the City of Redlands to meet all California drinking water standards.
 - d. Recover as much as 8.6 million gallons per day (MGD) of domestic water production from major wells for the City of Redlands Municipal Water Department.
- 2.1 The Contractor shall complete the work required by this contract by:
- a. Using an agreed upon engineering subcontractor;
 - b. Procuring all necessary equipment and materials through competitive bidding procedures; and
 - c. Constructing the GAC Treatment facility.
- 2.2 The Contractor's responsibilities pursuant to this contract shall commence immediately upon the date this contract is approved by the State.
- 2.3 Within thirty (30) days of the effective date of this contract, the Contractor shall submit the estimated time schedule for completing the project.
- 2.4 Engineering plans and specifications for the facility shall be prepared in accordance with Article 3 and shall be submitted to the State for approval.
- 2.5 All additions to the contractor's public water system shall be designed in accordance with the current California Waterworks Standards, Title 22, California Code of Regulations.

City of Redlands Municipal Utilities Dept.
Contract No. 90-T0042

- 2.6 The design, construction, and installation of the GAC Treatment Facility shall adhere to all Federal, State, and local regulations, codes and permits.
- 2.7 Once approved and constructed, the Contractor agrees to operate and maintain the treatment facility on a continuous basis from June through October, and on a limited basis from November through May of each year. Between the months of November through May, the Contractor agrees to operate and maintain the treatment facility in an effort to optimize water production from this well head system whenever economically practicable. It is recognized that the facility will be rendered temporarily inoperable during periods of routine maintenance.
- 2.8 Contaminants in the treated water must be reduced to an acceptable level of less than 5.0 parts per billion (ppb) for TCE and less than 0.2 ppb for DBCP.
- 2.9 Within its authority under the law, the Contractor shall schedule and award contracts in such a manner as to permit expediting the completion of the project.
- 2.10 As far as is reasonably possible, the work to be performed under this contract shall adhere to the schedule outlined below:

Crafton-Redlands 8.6 MGD
GAC Treatment Facility
Tentative Project Schedule

<u>Task Description</u>	<u>Months to complete from effective date of this contract</u>
a. Submit bids to State for purchase of equipment	2
b. Award contract(s) for purchase of equipment	3
c. Submit groundwater monitoring plan to State	2
d. Install water quality monitoring equipment	4
e. Submit bids to State for construction	3
f. Award construction contract(s)	4
g. Start Construction of treatment facility	4
h. Construction 50% complete	7
i. Construction 100% complete	10
j. Start up, conduct tests and monitoring	10
k. Final Report, Operations and Maintenance Manual, and "as built" plans submitted to State.	12

ARTICLE 3

TEXAS STREET WELL SITE GRANULAR ACTIVATED CARBON VOC

REMOVAL SYSTEM

SUMMARY OF TASKS AND MAJOR COMPONENT DELIVERABLES

TASK 1.0 - BID ASSISTANCE

The Contractor shall utilize an agreed upon engineering subcontractor in awarding the equipment and material purchase contracts. The bid assistance component shall include answering technical engineering and specifications related questions. The work shall also include assistance with testing for verifying the bidders' information and evaluation of test results and bids for the GAC units.

TASK 1.0 BID ASSISTANCE TOTAL \$ 6,000

TASK 2.0 - ENGINEERING CONSTRUCTION PHASE

The engineering construction phase of this project will provide services for the overview of construction, inspection of labor and materials. The Contractor shall provide engineering services and utilize an agreed upon engineering subcontractor on a part-time basis, as needed, throughout the construction phase.

TASK 2.0 ENGINEERING CONSTRUCTION
PHASE TOTAL \$ 8,000

TASK 3.0 - MATERIALS, LABOR AND EQUIPMENT

Subtask 3.1 - Process Piping, Meters, Fittings, Valves

The processing piping phase shall include all materials, equipment and labor required to plumb the three existing wells to the carbon units and from the carbon units to the Texas Street reservoir.

Subtask 3.2 - Site Preparation

The site preparation phase of this project shall include the minor grading and compaction, and the construction of reinforced concrete slabs as a base for the carbon units, control valves and meters.

Subtask 3.3 - Granular Activated Carbon Units

This major equipment purchase and delivery phase of the granular activated carbon units shall include purchase and delivery of carbon units capable of treating 8.64 MGD per day flow rate and shall include the initial one time filling of virgin carbon.

TASK 3.0 MATERIALS, LABOR AND EQUIPMENT TOTAL	\$1,962,900
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TEXAS STREET GAC SITE SUMMARY DESIGN TOTAL:

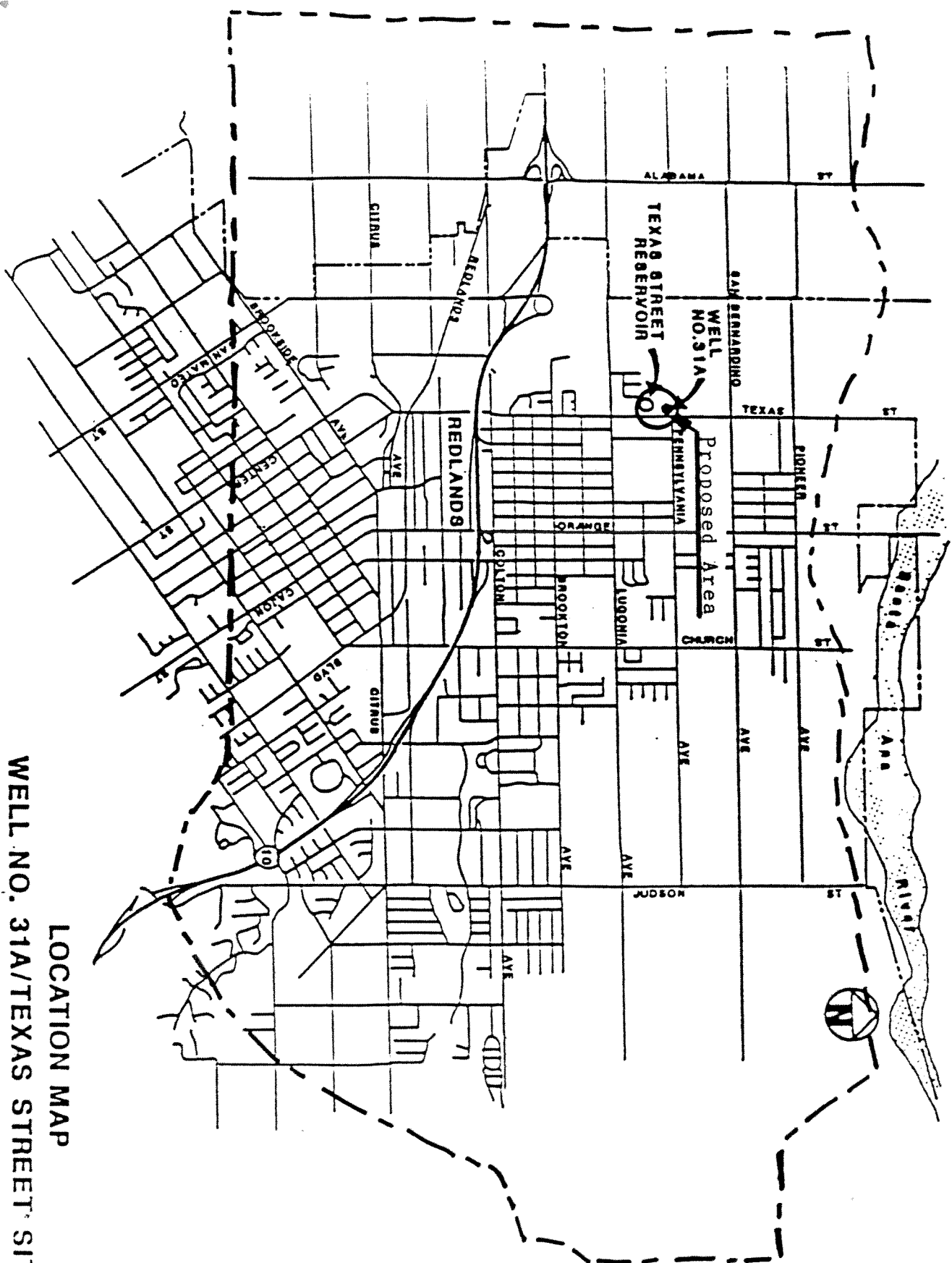
TASK 1.0 - BID ASSISTANCE	\$ 6,000
TASK 2.0 - ENGINEERING AND CONSTRUCTION PHASE	8,000
TASK 3.0 - MATERIALS, LABOR AND EQUIPMENT TOTAL	\$1,962,900

GRAND TOTAL.....\$1,976,900

*Line item changes may be made upon written approval of the Contract Manager.
In no event shall line item changes have the effect of increasing the
maximum amount payable expressed in the Grand Total above.

Map of the site for the GAC Treatment Facility

Contract # 90-T0042



LOCATION MAP

WELL NO. 31A/TEXAS STREET SITE

Proposed Area For Treatment System

CITY OF REDLANDS

Crafton-Redlands Site Boundary

RESOLUTION NO. 4695

A RESOLUTION OF THE CITY OF REDLANDS, AUTHORIZING ACCEPTANCE AND EXECUTION OF A GRANT AGREEMENT WITH THE STATE OF CALIFORNIA DEPARTMENT OF HEALTH SERVICES FOR THE CONSTRUCTION OF WELLHEAD TREATMENT FACILITIES AT THE TEXAS STREET WELL FIELD

WHEREAS, the City of Redlands recognizes that portions of the Bunker Hill Ground Water Basin have been contaminated with organic chemicals including TCE and DBCP, and

WHEREAS, the City of Redlands has lost eleven (11) domestic water wells due to TCE and DBCP contamination and will lose another well due to the lowering of the DBCP standard by the State Department of Health Services, and

WHEREAS, the Regional Water Quality Control Board has determined that the TCE plume is moving westerly toward other domestic water supply wells of the City and constitutes a major threat to the aquifer and the water supply to other downstream Cities including Loma Linda and Riverside, and

WHEREAS, the State of California Department of Health Services has made a determination of Imminent and Substantial Endangerment, in accordance with the Health and Safety Code and,

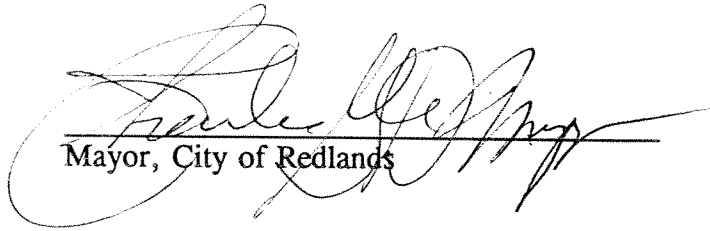
WHEREAS, the State of California Department of Health Services has funds available from the Department of Health Services Hazardous Substance Clean-up Fund for the clean-up of volatile organic contaminants and had identified this project for funding and,

WHEREAS, the City of Redlands has performed engineering studies to determine that a granular activated carbon treatment system for \$4,100,000 is the most cost-effective, environmentally safe and reliable groundwater treatment system for the removal of both TCE and DBCP,

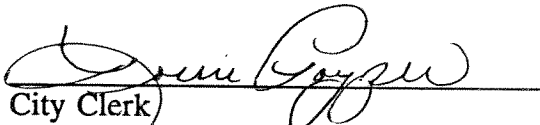
NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Redlands does hereby accept a grant from the State of California Department of Health Services Hazardous Substance Clean-Up Fund, Contract 90-T0042 in the amount of \$1,976,900, for the construction of granular activated carbon treatment facilities for removing TCE and DBCP from the groundwater at the Texas Street Well Field, which represents 48 percent of the estimated construction cost of \$4,100,000 for the facility, and authorizes the Utilities Director to execute said Agreement with the State and any amendments, thereto.

ADOPTED, SIGNED AND APPROVED, this 18th day of September, 1990.

SIGNED:


Mayor, City of Redlands

ATTEST:


City Clerk
City of Redlands, California

I, Lorrie Poyzer, City Clerk of the City of Redlands, hereby certify that the foregoing Resolution was adopted by the City Council at a regular meeting thereof, held on the 18th day of September, 1990, by the following vote:

AYES: Councilmembers Beswick, Cunningham, Larson, Milson; Mayor DeMirjyn

NOES: None

ABSENT: None


City Clerk