

4-11

Agreement for Dismissal and Tolling

WHEREAS, HONEYWELL INC., a Delaware corporation, ("Honeywell") has sued the CITY OF REDLANDS ("Redlands"), among others, in San Bernardino County Superior Court case No. SCV 16369 (the "Civil Action") related to the purchase, installation, monitoring and maintenance of certain heating, cooling, electrical lighting, irrigation and other equipment pursuant to an agreement dated March 12, 1992, and attached to Honeywell's complaint in the Civil Action as Exhibit "A" (the "Agreement");

WHEREAS, Redlands has filed a cross-complaint in that action against Honeywell, among others, related to the Agreement (the "Cross-Complaint");

WHEREAS, Honeywell guaranteed in the Agreement the achievement of certain savings over the course of seven years;

WHEREAS, the amount of the guarantee and the amount of savings (or lack thereof) actually achieved has given rise to a dispute as between Honeywell and Redlands;

WHEREAS, several of the annual periods during which such guaranteed savings were to be achieved have elapsed, but the entire seven-year period during which the cumulative guaranteed energy and operational savings are to be achieved has not yet elapsed;

WHEREAS, Honeywell and Redlands wish to defer and perhaps avoid the costs and expenditure of time necessary to litigate these issues until such time as the seven year guarantee period has elapsed;

WHEREAS, Honeywell and Redlands are willing to dismiss their complaint and cross-complaint, respectively, without prejudice, in exchange for the tolling agreement and the other terms set forth hereinafter;

THEREFORE, on this December 16, 1996, Honeywell and Redlands agree as follows:

1. Representations and Warranties. Honeywell and Redlands each represent and warrant that this Agreement has been authorized by their Board of Directors and City Council, respectively, and that the individual executing this Agreement for Dismissal and Tolling ("Tolling Agreement") is an authorized agent with full power and authority to execute this Tolling Agreement on their behalf;

2. Dismissal of Civil Action and Cross-Complaint Without Prejudice. On receipt of the fully executed Tolling Agreement, Honeywell agrees to dismiss the entire Civil Action without prejudice, and Redlands agrees to dismiss the entire Cross-Complaint without prejudice.

February 11, 1997 (6:54pm)

Tolling Agreement - Page 1

1 3. Tolling Agreement. Honeywell, for itself and for its officers, directors,
2 employees, agents, attorneys, parent companies, subsidiaries, successors, assigns and
3 representatives, (collectively referred to as "the Honeywell Agents") hereby agree that effective
4 November 1, 1994, all statutes of limitation and other time-sensitive legal defenses (such as
5 laches) applicable to any claims related to, or arising from the Civil Action, the Cross-
6 Complaint or the Agreement will be tolled and suspended to and including December 16 in the
7 year 2000. In any action brought by Redlands, Honeywell and the Honeywell Agents will not
8 assert, and hereby waive, any defense related to the passage of time, including, but not limited
9 to statutes of limitation and laches, provided, however, this tolling agreement will not toll or
10 waive any defenses relating to the passage of time or including statutes of limitation and laches
11 based on time elapsed prior to November 1, 1994 or after December 16, 2000.

12 4. Renewal of Tolling Period. Honeywell and Redlands agree that, if, by June 16,
13 2000 Honeywell has not provided Redlands with the final annual audit required under the
14 Agreement, then Honeywell and Redlands agree to execute an agreement, or if necessary,
15 agreements, upon terms substantially identical to this Tolling Agreement, which agreement(s)
16 shall renew and extend the tolling period to a point in time not less than six (6) months after
17 Honeywell completes the final required annual audit.

18 5. Mutual Waiver. Except as provided herein, Honeywell and Redlands mutually
19 agree to waive all claims, attorney fees, costs and expenses arising from the Civil Action and the
20 Cross-Complaint, provided however, the waiver would not apply to a subsequent action related
21 to the Agreement brought by either Honeywell or Redlands.

22 6. No Admission. Neither this Tolling Agreement nor the dismissal shall be deemed
23 to constitute an admission, directly or indirectly, by any party of the truth of, or their liability or
24 responsibility on account of or with respect to, any matters referred to in the Agreement herein,
25 but is for the sole and exclusive purpose of compromising a disputed claim on at least an interim
26 basis, and each party expressly denies any and all liability on account of any of the claims,
27 allegations or causes of action of any party against the other, whether or not the same are referred
28 to or could have been referred to herein.

 7. Governing Law. This Tolling Agreement shall be interpreted, applied and
enforced in accordance with the laws of the State of California.

 8. Whole Agreement. This Tolling Agreement contains the entire agreement among
the parties hereto with respect to the tolling agreement subject matter described herein and
supersedes all such prior agreements and understandings of the parties hereto with respect to the
tolling agreement subject matter hereof, and no waiver, alteration or modification of any of the
provisions hereof shall be binding unless it is in writing and signed by each of the parties hereto.

9. Confirmation of Representations. Certain understandings were reached during mediation of the Civil Action and Cross-Complaint which gave rise to this Tolling Agreement. Those understandings are set forth and confirmed herein. Honeywell confirms that in or before its seventh annual audit of the City's savings, Honeywell's audits will reflect all of the City's actual payments, if made by the City, pursuant to the program as reflected in the column on 68 of 70 of the Agreement entitled "Program Costs". This confirmation is conditioned on the City's not terminating Honeywell's maintenance services and the City's compliance with the contract obligations. Honeywell and Redlands further confirm that neither the costs nor the energy or operational savings of the Fire Station HVAC system has been or will be included in Honeywell audits prepared pursuant to the Agreement.

10. Successors and Assigns. This Tolling Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

11. Attorneys' Fees. In any action arising from the failure of any party to comply with the terms of this Tolling Agreement, or to enforce the Tolling Agreement, or to defend against unmeritorious claims based on the Tolling Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees.

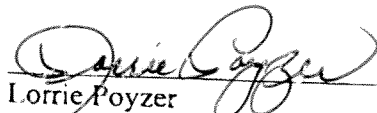
12. Facsimile Counterparts. This Tolling Agreement may be signed in counterparts which, when taken together, shall constitute a complete agreement. The Tolling Agreement shall be effective upon execution by both Honeywell and Redlands. Counterpart signatures may be delivered via facsimile.

IN WITNESS WHEREOF, the parties hereto have executed this Tolling Agreement as of the date first written above.

CITY OF REDLANDS

By: 
Swen Larson, Mayor

ATTEST:


Lorrie Poyzer
City Clerk, City of Redlands

February 11, 1997 (6:54pm)

Tolling Agreement - Page 3

HONEYWELL INC., a Delaware corporation,

By: Ed Matthews
Ed Matthews, Area Service Leader

Approved as to form:

Willis, Kendig & Alpert

David E. Kendig
David E. Kendig, Esq.

Wickwire Gavin

Joseph F. McGuinness
Joe McGuinness, Esq.

February 11, 1997 (6:54pm)

Tolling Agreement - Page 4